AS TO THE ADMISSIBILITY OF

Application No. 17713/91
by Horst SCHINDEWOLF
against the Federal Republic of Germany

The European Commission of Human Rights (First Chamber) sitting in private on 2 September 1992, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
J.A. FROWEIN
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. 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 20 November 1990 by Horst SCHINDEWOLF against the Federal Republic of Germany and registered on 23 January 1991 under file No. 17713/91;

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 facts of the case, as they have been submitted by the applicant, may be summarised as follows.

The applicant is a German citizen born in 1938. He is an electrical and telecommunication engineer by profession. He is resident at Mannheim-Vogelstang.

In August 1988 the applicant installed on the roof of his house a short wave aerial system with a lattice-mast almost 10 m high, for the purpose of his leisure time activities as a radio amateur.

On 20 October 1988 the Mannheim Municipality, upon complaints of the applicant's neighbours, ordered the applicant to remove the aerial concerned before 30 June 1989. The Municipality noted that the building development plan (Bebauungsplan) for the area of the applicant's estate did not provide for any restrictions as to the erection of aerial systems. The applicant's aerial system was less than 10 m high and thus not subject to any authorisation under S. 52 para. 1 (13) of the Baden-Württemberg Building Regulations (Landesbauordnung). However, in accordance with S. 52 para. 5 of the said Regulations, such aerial systems were nevertheless subject to other provisions of the Building Regulations or of public law, i.e. building development plans. After an inspection in situ, the Municipality considered that the applicant's aerial system with projecting antennas disfigured the appearance of the locality (Orts- und Straßenbild) within the meaning of S. 13 of the Baden-Württemberg

Building Regulations. The Municipality also referred to SS. 3, 49 and 57 of the Building Regulations.

On 15 April 1989 the Karlsruhe Provincial Government (Regierungspräsidium) dismissed the applicant's objection (Widerspruch).

On 22 August 1989 the Karlsruhe Administrative Court (Verwaltungsgericht) dismissed the applicant's action to quash the decision of 20 October 1988.

The Court, having inspected the applicant's estate and its surroundings and having regard to photographs filed by the applicant, found that the decision of the Mannheim Municipality of 20 October 1988, as confirmed by the Karlsruhe Provincial Government on 15 April 1989, was lawful and did not disclose any violation of the applicant's rights. The order to remove the aerial system constituted a demolition order in accordance with S. 64 para. 1 of the Baden-Württemberg Building Regulations. The Court confirmed the reasoning of the Municipality that the aerial system, though being as such not subject to any authorisation, disfigured the appearance of the locality and was thus in breach of S. 13 para. 2 of the Building Regulations. In this respect, the Court noted that, in the immediate vicinity of the applicant's estate, in accordance with the building development plan, only one- or two-story houses had been constructed in the middle of gardens with high trees. In these surroundings the applicant's aerial system with its lattice-mast was a disproportionate foreign element which dominated and was strikingly out of place, even more so in winter when there was no vegetation.

Moreover, the Administrative Court, balancing the conflicting interests in the present case, considered that the order in question did not violate the applicant's freedom to receive information. It noted in particular that the applicant was not hindered to inform himself from general sources, or by means of an aerial system not disfiguring the surroundings, e.g. a telescope aerial system or an aerial system which could be lifted, if necessary.

On 27 June 1990 the Baden-Württemberg Administrative Court of Appeal (Verwaltungsgerichtshof) dismissed the applicant's appeal (Berufung). The Court, having also inspected the locality concerned, found that the applicant's aerial system was at variance with the particular nature of the building area in question, as provided for in the building development plan. In particular, the real estates in the close vicinity were very small and there was a high density of construction. The neighbours' living conditions were considerably impaired by the applicant's aerial system. The applicant, for the purposes of his spare time activities, irrespective of whether he only had world-wide contacts with other radio amateurs or also received distant radio stations in the short wave range, unreasonably expected his close neighbours to tolerate the view of such a high mast with a big aerial system. He had thereby also violated his obligation to take his neighbours' interests into due consideration (Rücksichtnahmegebot) under S. 15 of the Land Use Regulations (Baunutzungsverordnung). There was no appearance of a violation of his right to information, as guaranteed by Article 10 para. 1 of the Convention. The Court did not grant leave to appeal on points of law (Revision) to the Federal Administrative Court (Bundesverwaltungsgericht).

On 4 October 1990 the Federal Administrative Court rejected the applicant's request for leave to appeal on points of law (Nichtzulassungsbeschwerde). The Federal Administrative Court considered that the applicant had failed to show the general importance of his case.

On 15 November 1990 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde) on the ground that it did not offer

any prospect of success.

The Constitutional Court considered in particular that the impugned demolition order as well as the ensuing administrative court decisions did not violate the applicant's right to freedom of information. The general duty under S. 15 of the Land Use Regulations to take neighbours' interests into due consideration was a general law limiting the exercise of this right. In the present case, the Administrative Court and the Administrative Court of Appeal, in their respective decisions, had balanced the conflicting interests. Their conclusion that the neighbours' interests prevailed could not be objected to under constitutional law. The reference by the Administrative Court of Appeal to other categories of cases did not appear arbitrary. Moreover, the applicant had failed to show that he had been discriminated against by the competent authorities. The other cases of high aerial systems mentioned by him, namely aerial systems run by the post services, a tower of the telecommunication services, or masts of circuit lines, could not be compared to his case.

The decision was served on 17 November 1990. The applicant subsequently removed his aerial system.

COMPLAINTS

The applicant complains under Articles 10 and 14 of the Convention that the order of the Mannheim Municipality dated 20 October 1988 to remove his aerial system, as confirmed in the ensuing court proceedings, violated his right to receive and impart information. He submits in particular that he is prevented from receiving and imparting information and ideas as a radio amateur in the short wave band. He considers that the removal order was arbitrary.

THE LAW

The applicant complains that the order of the Mannheim Municipality dated 20 October 1988 to remove his aerial system, as confirmed in the ensuing court proceedings, violates his right to receive and impart information and ideas. He invokes Articles 10 and 14 (Art. 8, 10) of the Convention. Article 10 (Art. 10), so far as relevant, provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom ... to receive and impart information and ideas without interference by public authority and regardless of frontiers...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Commission considers that the order of the German authorities to remove the short wave aerial system constituted an interference with the applicant's freedom to receive and impart information under Article 10 para. 1 (Art. 10-1). Such interference amounts to a breach of the Convention, if it is not justified under Article 10 para. 2 (Art. 10-2), namely prescribed by law and necessary in a democratic society for one of the legitimate aims enumerated in this provision.

The Commission notes that the German authorities based the removal order on S. 15 of the Land Use Regulations, as well as provisions of the Baden-Württemberg Building Regulations, which provide for removal of any construction in breach of, inter alia, the duty to take neighbours' interests into due consideration. The German authorities, in particular the Karlsruhe Administrative Court and the Baden-Württemberg Administrative Court of Appeal, having inspected the locality concerned, found that the conditions for removal under these provisions were fulfilled. The Commission considers that the removal order was prescribed by German law.

The removal order aimed at protecting the interests of the applicant's neighbours in living in an appropriate building development, i.e. the rights of others.

As regards the question of necessity of the interference in question, the Commission recalls that the adjective "necessary" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention implies the existence of a "pressing social need". The Contracting States have a margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision which covers the basic legislation and the decisions applying it, even those given by an independent court (cf. Eur. Court H.R., Lingens judgment of 8 July 1986, Series A no. 103, p. 25, para. 39).

The Commission notes that the German authorities ordered the applicant to remove an aerial system which enabled him to receive and transmit messages in the short wave band. The aerial was fixed on the roof of his house on a lattice-mast which was almost 10 m high and had big antennas. The Karlsruhe Administrative Court and the Baden-Württemberg Administrative Court of Appeal, having both inspected the locality concerned, considered that, having regard to the small size of the plots of land in the area and density of construction as well as the general appearance, the neighbours' living conditions were impaired to such an extent that the applicant could not expect them to tolerate the view of his aerial system. The applicant was not prevented from informing himself from general sources and could also use a telescope aerial system or one which could be lifted, if necessary. This reasoning was confirmed by the Federal Constitutional Court which also stressed that the applicant used the aerial system as a radio amateur in his spare time.

In these circumstances, the Commission, taking into account the careful balancing of the conflicting interests in the German court decisions, finds that the removal order is not disproportionate to the legitimate aim of protecting the neighbours' interests. The interference was thus necessary in a democratic society for the protection of the rights of others.

Furthermore, the applicant's submissions do not disclose any appearance of discrimination against him contrary to Article 14 (Art. 14) of the Convention.

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

Accordingly, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber Acting President of the First Chamber

(M. de SALVIA) (F. ERMACORA)