AS TO THE ADMISSIBILITY OF

Application No. 21956/93
by Irmgard Maria SCHMID
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 22 February 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

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 10 May 1993 by Maria Schmid against Austria and registered on 1 June 1993 under file No. 21956/93;

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, a pensioner (Pensionistin) is an Austrian citizen born in 1931 and living in Linz. She is represented by Mr. B. Binder, a lawyer practising in Linz.

It follows from her statements and the documents submitted that the applicant's late husband was a farmer. He and the applicant cultivated farm land which the applicant had bought in 1966. The farm land is situated in Gramastetten. After her husband's death, the applicant leased the farm land to another farmer, Mr. P. in Puchenau who is a cattle raiser and uses the land as pasture.

By sales contract of 19 November 1990 (with amendments on 14 December 1990), the applicant bought 5,000 square meters of farm land in order to round up her existing property of 48,000 square meters. The farm land in question is contiguous to her land. The original price was AS 30 per square meter. Another lot was sold by the same seller, to farmer E., at the price of AS 40 per square meter.

Having obtained, inter alia, a report from the Regional Chamber of Farmers (Bezirksbauernkammer) and having visited the spot in the presence of the applicant's counsel the District Real Property Transaction Authority at Urfahr (Bezirksgrundverkehrskommission), Upper Austria, refused on 4 March 1991 the necessary authorisation for the real estate transaction. It is stated in the decision that the sellers are severely in debt. Their total debts amount to approximately AS 900,000. The farm buildings are in very bad state and

their living conditions are bleak. The planned sale would not have considerably improved the living conditions of the selling family, rather it would have contributed to a decline of their economic existence.

It is added that the sales contract with E. could be approved because the buyer had eventually agreed to pay AS 40 instead of AS 30 per square meter and because the plots of land acquired by him were of minor importance for the sellers. In the applicant's case however, the requirements of Section 4 of the Upper Austrian Real Property Transaction Act of 1975 (Grundverkehrsgesetz) were not given. According to that provision, a transfer of farm land has to serve the public interest in the maintenance and creation of agricultural or forest property and in the maintenance and creation of an efficient agricultural community, or for the creation of an economically sound medium-sized or small agricultural property. The sale in question did not serve these purposes.

The applicant appealed.

On 23 May 1991 the Regional Real Property Transaction Authority (Landesgrundverkehrskommission) at Linz without oral hearing and further investigations rejected the appeal. This Commission stated that it was of no great importance whether the seller's small farm was further reduced or enlarged by the sale in question. The only prerequisite was that the buyer would himself farm the land. Therefore the sale could not be authorised, regardless of the sale-price convened between the parties because indisputably the buyer was not in a position to farm the land herself as she did neither have a farm nor the necessary agricultural machines and tools.

The applicant then lodged a constitutional complaint which was rejected by the Constitutional Court (Verfassungsgerichtshof) on 7 October 1992. This decision was received by applicant's counsel on 10 December 1992.

Insofar as the applicant complained that she had not been heard by the Appellate Authority, it is pointed out that the latter did not carry out any investigations and therefore the applicant's hearing was not necessary as the Appellate Authority based its findings on the facts already established in first instance, which were not contested by the applicant. The principle of a "fair hearing" was not violated because the applicant had been heard in first instance and an inspection of the site had been carried out. Insofar as the applicant had complained that denial of the authorisation interfered with her property right as guaranteed by Article 5 of the Basic Law (Staatsgrundgesetz), it is stated that there was nothing to show that the measure complained of was unlawful and arbitrary. The applicant's argument that, in view of the excessive production in agriculture and the necessity in the EEC to reduce agricultural production it was no longer in the public interest to regulate the sale of agricultural land, was considered to be irrelevant. The Court reiterated its consistent case-law according to which it is in the public interest that the buyer farms the acquired property himself.

Concluding that the measure complained of did not violate any constitutional right the Constitutional Court added that even though in accordance with Article 133 (4) of the Federal Constitution (Bundesverfassungs-Gesetz) no appeal to the Administrative Court was available for the applicant it did not have to examine whether the (non-constitutional) law had been correctly applied.

COMPLAINTS

The applicant submits that she agreed to a higher price, namely AS 40 per square meter. She considers that denial of an authorisation of the sale violates her right to peaceful enjoyment of possessions as

guaranteed by Article 1 of Protocol No. 1. She also alleges a violation of her right to a fair trial as guaranteed by Article 6 para. 1 of the Convention. She points out that upon appeal completely different reasons were given for refusal of the authorisation and therefore she considers that she should have been heard orally on appeal. She also argues that domestic law was wrongly applied as in her submission it does not matter whether the buyer of agricultural land manages the farm himself or via a third party. She further argues that the aim of the Upper Austrian Real Property Transaction Act is to maintain big agricultural entities while this aim is no longer in the public interest in view of the excess of agricultural production in Europe.

Finally she invokes Article 13 which she considers violated because she could not submit her case to the Administrative Court.

THE LAW

1. The applicant mainly complains that the refusal by the competent Austrian authorities to approve the sale to her of a plot of agricultural land amounted to a violation of Article 1 of Protocol No. 1 (P1-1) which guarantees the right to the peaceful enjoyment of possessions.

It can be left undecided whether this provision can be invoked by the applicant although, in principle, it does not guarantee a right to acquire possessions (Dec. 9.5.86, No. 11628/85, D.R. 47, 270).

In any event the use of property may be subject to regulations under the conditions set out in Article 1 para. 2 of Protocol No. 1 (P1-1-2).

It has not been disputed that the measure complained of is based on domestic law.

The law in question serves the purpose of safeguarding agriculture and forestry and must therefore be considered to be in the general public interest.

In the present case the refusal was found to be lawful by the Constitutional Court and there is nothing to show that the domestic decisions complained of arbitrarily disregard any vital interests of the applicant such as to upset the fair balance which has to be struck between the demands of the public interest of the community and the requirements of protection of the individual's fundamental rights (cf. Eur. Court H.R., Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, p. 26 para. 59).

The Commission accordingly finds no indication of a violation of Article 1 of Protocol No. 1 (P1-1) as the interference complained of is justified under para. 2 of that provision. It follows therefore that the complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has next complained that Article 6 para. 1 (Art. 6-1) was violated in her case because she was not orally heard in the proceedings before the Regional Real Property Transaction Authority which examined her appeal against the decision of the District Real Property Commission of 4 March 1991.

The Commission notes that the application of Article 6 (Art. 6) to proceedings before courts of appeal does depend on the special features of the proceedings involved. Account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (Eur. Court H.R., Ekbatani judgment of 26 May 1988, Series A no. 134, p. 13 para. 27). In the present case it has been pointed out by the Austrian Constitutional Court that the

Appellate Authority based its findings on the facts already established in first instance after an oral hearing. This was not contested by the applicant. It follows that in the present case the Appellate Authority limited its control to points of law and in these particular circumstances oral argument was unnecessary (cf. Eur. Court H.R., Axen judgment of 8 December 1983, Series A no. 72, p. 12-13, para. 28; Schuler-Zgraggen judgment of 24 June 1993, Series A no. 263 p. 20 para. 58).

There is furthermore nothing to show that the applicant had not been given adequate opportunity to argue her case.

It follows that this part of the application has to be rejected in accordance with Article 27 para. 2 (Art. 27-2) as being manifestly ill-founded.

3. Insofar as the applicant invokes Article 13 (Art. 13) of the Convention according to which everyone whose rights and freedoms are set forth in the Convention are violated shall have an effective remedy it has to be noted that the applicant did have the possibility to complain to the Regional Real Property Transaction Authority as well as to the Austrian Constitutional Court. There is nothing to show in the present case that these instances did not have adequate competence of control with regard to alleged violation of Convention rights. It can therefore not be found that the remedies in question were ineffective.

It follows that this part of the application likewise has to be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)