AS TO THE ADMISSIBILITY OF

Application No. 21344/93
by August SZECHENYI
against Hungary

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

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO

Mr. K. ROGGE, Secretary to the Second 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 8 July 1992 by August Szechenyi against Austria and registered on 8 February 1993 under file No. 21344/93;

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 is a Hungarian national born in 1921 in Hungary and currently living in Vienna, Austria.

The facts as submitted by the applicant and which may be deduced from the documents lodged with the application may be summarised as follows.

Before 1945 the applicant owned some 1,270 ha real property in Pocsaj. In or about 1945 this property was expropriated without compensation. Property belonging to a relative of the applicant's was also expropriated. One of this person's legal successors is the applicant.

In 1991 and 1992 the Hungarian Parliament passed two laws, namely Law XXV of 1991 (on partial compensation for damages caused unjustly by the State to properties owned by citizens in the interest of settling ownership relations) and Law XXIV of 1992 (on partial compensation for damages caused unjustly to properties owned by

citizens by laws enacted between 11 May 1939 and 8 June 1949 in the interest of settling ownership relations).

These Acts provide for partial compensation calculated by reference to a sliding scale giving compensation of 100% of the nominal value of the property up to a maximum of 200,000 HUF (approximately 13,000 FF) declining to 10% of a nominal value of over 500,000 HUF (approximately 32,500 FF). The applicant submits that the nominal value for compensation purposes in any event bears no relation to the market value.

The applicant did not claim compensation under these laws but applied for restitution of the property instead.

In 1991 the applicant lodged an application with the Constitutional Court of the Hungarian Republic (Magyar Köztársaság Alkotmánybírósága). He requested that his family's former real property be given back to him.

On 24 March 1992 his application was rejected by the Constitutional Court of Hungary for lack of competence.

On 29 May 1992 the applicant lodged a further application with the President of the Supreme Court (Legfelsöbb Bíróság elnöke) concerning his own former 1,270 ha real property. On 2 July 1992 he was informed that the President had no jurisdiction in respect of his request and was advised to claim the partial compensation available under Hungarian law.

COMPLAINTS

1. The applicant complains that his and his family's real property was expropriated in or about 1945, while the real property of other people was not expropriated. He submits that there is a continuing violation of his property rights.

2. The applicant also complains that his request for restitution of the expropriated property was refused.

3. The applicant invokes Article 1 of Protocol No. 1, Article 14 of the Convention and Article 3 of Protocol No. 4.

THE LAW

1. The applicant complains about expropriations of real property in or about 1945. He invokes Article 1 of Protocol No. 1, Article 14 of the Convention and Article 3 of Protocol No. 4 (P1-1, Art. 14, P4-3).

The Commission recalls that according to the generally recognised principles of international law, for all Contracting Parties, the Convention governs only those facts which arose after it came into force in respect of the Party concerned. The applicant complains about expropriations in or about 1945, i.e. long before the entry into force of the Convention and of Protocols No. 1 and No. 4. He submits that there is a continuing violation of his property rights. However, the Commission considers that the expropriations in 1945 were instantaneous acts and do therefore not constitute continuous violations. It follows that, insofar as the application concerns those deprivations of possessions, the Commission is not competent, ratione temporis, to examine them (cf. mutatis mutandis No. 7775/77, Dec. 5.10.78, D.R. 15, p. 143 at p. 158). This part of the application is therefore incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant also complains under Article 1 of Protocol No. 1 (P1-1) that he was refused restitution of the properties concerned.

The Commission recalls that the Convention does not guarantee a right to restitution or other reparation of injuries which are not in themselves violations of the Convention. (No. 7694/76, Dec. 14.10.77, D.R. 12 p. 131, 133). It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)