AS TO THE ADMISSIBILITY OF

Application No. 26392/95
by Ernst WIRTH
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 12 April 1996, the following members being present:

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

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 20 January 1995 by Ernst WIRTH against Germany and registered on 3 February 1995 under file No. 26392/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

FACTS

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

The applicant, born in 1959, was a German national and resident at Aschheim. In the proceedings before the Commission, he was represented by Mr. P. Kloer, a lawyer practising in Munich. By letter of 12 February 1995, counsel informed the Commission that the applicant had died and that his heirs wish to pursue the application.

In 1987 the applicant's brother died intestate and left as his heirs, apart from the applicant, his mother and his sister. According to the relevant provisions of the German Civil Code (Bürgerliches Gesetzbuch), the mother was entitled to a half part of the inheritance and the applicant and his sister each to one-quarter thereof. However, the farm in question was subject to special legislation, the Real Property Transaction Act (Grundstücksverkehrsgesetz) providing that, in the case of hereditary succession, one of the heirs may request to take over the entire property and pay off the other heirs. Such a transfer could only be ordered if the estate had a farm and that the income was sufficient to maintain a family. The amount of the sum to be paid to the other heirs had to be calculated on the basis of the farm's income value (Ertragswert).

The applicant's mother claimed that she should be called to take over her son's farm as she had previously passed it on to him, had been living and working on the farm and had managed it since her son's death. While her daughter agreed, the applicant objected. In the following proceedings, the applicant was represented by counsel.

On 5 July 1989 the Augsburg District Court (Amtsgericht) transferred the title to the whole farm to the applicant's mother. The Court found in particular that the farm's operating income was comparable to the income of other farms and sufficient to maintain a family. Moreover, the applicant's mother was living and working on the farm, and also appeared capable of running the farm. In these respects the Court proceeded from an agricultural expert opinion. The Court further considered that the mother had previously ceded the farm to her deceased son and that the applicant himself did not intend to take over the farm. The Court also noted that the applicant, as a mechanician for farming equipment, had attained an independant position in life. Moreover, following a quarrel with his brother, the applicant, together with his wife, had moved to Aschheim.

On 30 November 1989 the Munich Court of Appeal (Oberlandesgericht) dismissed the applicant's appeal. The Court of Appeal confirmed the factual findings of the District Court. As to the applicant's argument that his mother was not, for health reasons, capable of running the farm, the Court of Appeal further referred to the results of an examination by the local health officer of 13 November 1989. Considering the putative will of the de cuius, the Court took into account that the applicant's mother had been living on the farm since her birth and that she had brought this property into her marriage. It also noted that only the applicant's mother needed a source of income.

On 14 December 1994 the Federal Constitutional Court (Bundesverfassungsgericht) dismissed the applicant's constitutional complaint. The Constitutional Court found that the legislation according to which, in case of hereditary succession, a farm may be transferred to one of the heirs who has to pay off the other heirs, did not violate the constitutional right of inheritance (Erbrechtsgewährleistung) or the constitutional right to equal treatment (Gleichheitssatz). Legislation in case of intestate succession had to take the reasonable interests of the de cuius into account. In general, equal shares would therefore be attributed to relatives of equal affinity. However, in case of a farm which would not be viable if divided, it appeared reasonable to transfer it to one of the heirs. These considerations also justified the resulting difference of treatment between the heirs. Moreover, the particular situation of farms as source of income allowed for this special legislation as compared to trade and industry. As regards the applicant's complaints about the lower courts' factual findings, the Constitutional Court considered that there was no appearance of arbitrariness.

COMPLAINTS

1. The applicant complained under Article 1 of Protocol No. 1 that the transfer of the farm to his mother violated his right to property. He stated that he in principle agreed with the special legislation in question. However, in the present case, the legal requirements for the transfer of the farm had not been met, i.e. the farm allegedly was not a full source of income.

2. The applicant further complained under Article 6 para. 1 of the Convention that the Courts had not duly established the relevant facts, in particular as to the circumstances of the farm and the capacity of his mother to run the farm.

THE LAW

1. The Commission notes that the applicant died after introduction of the application. By letter of 12 February 1996, counsel informed the Commission that his heirs wish to pursue the application.

The Commission recalls its case-law (No. 10474/87, Dec. 6.5.86, D.R. 47 p. 116; No. 12526/86, D.R. 68 p. 104) according to which the applicant's death does not in itself dispose of his or her complaint. In principle, it falls to the Convention organ before which the case is pending to decide whether the application should be further examined or whether it should be struck off the list of cases. In the examination of this question, special consideration must be given to the intentions exposed by the applicant's legal successor as well as to the nature of the complaint.

The present application concerns property matters and related court proceedings. The Commission finds that the applicant's heirs have a sufficient legal interest in the outcome of the proceedings before the Convention organs. It concludes that the applicant's heirs may take over and continue the proceedings instituted by the applicant before the Commission.

2. The applicant complained under Article 1 of Protocol No. 1 (P1-1) that the transfer of the farm to his mother violated his right to property.

Article 1 of Protocol No. 1 (P1-1) provides 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 impugned court decisions constituted an interference with the applicant's right to the peaceful enjoyment of his possessions, i.e. his share in the estate, which has to be considered under Article 1 para. 1, second sentence (Art. 1-1-2).

The German legislation in question pursued the aim of ensuring that, in case of intestate succession, a farm could be transferred to one of the heirs, taking the reasonable interests of the de cuius into account. This aim constitutes a legitimate "public interest" for the purposes of Article 1 of Protocol No. 1 (P1-1), even to the extent that it may imply the compulsory transfer of property from one individual to another (cf., mutatis mutandis, Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, pp. 30-32, paras. 39-45; Håkansson and Sturesson judgment of 21 February 1990, Series A no. 171-A, p. 15, para. 44).

The Commission observes that the applicant did not challenge the aim of the law itself, or its lawfulness in general. According to the applicant, the German courts had incorrectly found that the conditions to apply the relevant provisions of the Real Estate Transaction Act in the instant case were met.

Regarding the lawfulness of the impugned decisions, the Commission would recall that its power to review compliance with domestic law is limited (cf. Eur. Court H.R., Håkansson and Sturesson judgment, loc. cit., p. 16, para. 47). In the present case, the applicant's submissions do not disclose any non-observance of the legislation in question. In this respect, the Commission notes that

the District Court as well as the Court of Appeal established the pertinent facts inter alia on the basis of expert evidence. The Commission therefore considers that the impugned decisions were in accordance with German law.

The impugned decisions thus had a legitimate aim and were lawful for the purposes of Article 1 of Protocol No. 1 (P1-1).

The Commission further observes that the applicant did not show that the transfer of his deceased brother's farm to his mother was disproportionate. In this respect, the Commission had regard to the reasoning advanced by the German courts, inter alia that the farm had previously belonged to the applicant's mother and that she was the only one of the heirs not having another source of income as well as the fact that the applicant himself had not intended to take over the farm.

In these circumstances, there is no appearance of a violation of Article 1 of Protocol No. 1 (P1-1).

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

2. The applicant further complained under Article 6 para. 1 (Art. 6-1) of the Convention that the German courts had not duly established all relevant facts.

The Commission finds that there is nothing to show that the applicant, represented by counsel, could not duly forward his arguments in the course of the domestic court proceedings, or that the proceedings were otherwise unfair. Consequently, there is no appearance of a violation of his rights under Article 6 para. 1 (Art. 6-1).

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

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)