AS TO THE ADMISSIBILITY OF

Application No. 27026/95
by Elfriede ZACHER
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
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 7 April 1995 by Elfriede ZACHER against Germany and registered on 12 April 1995 under file No. 27026/95;

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, born in 1942, is a German national and resident at Pöttmes. She is a farmer by profession. In the proceedings before the Commission, she is represented by Mr. E. Eyl, a lawyer practising in Strasbourg.

A. Particular circumstances of the case

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

In 1974 the applicant took over her mother's farm of about 2.5 acres (19.2 hectare) where she produced milk.

In 1985 the Augsburg District Court (Amtsgericht), in the context of enforcement proceedings brought by a banking institute, ordered the forced sale by auction (Zwangsversteigerung) of the applicant's property, inter alia of the parcel of land No. 385. An agricultural expert opinion on the value of the estate was prepared in February 1986. The applicant's appeals against the fixing of the value of the different parcels of the estate were to no avail.

On 17 November 1989 the Augsburg District Court accepted the

highest offer made for the parcel No. 385 and decided that the property had been sold to Mr. and Mrs. L. by forced sale (Zuschlagsbeschluß). The Court observed that the highest offer for the whole property involved had been less than the sum of highest offers for the individual parcels, and that the parcels had therefore been sold individually.

On 9 January 1990 the Augsburg Regional Court (Landgericht) dismissed the applicant's appeal against inter alia the forced sale of the parcel No. 385. The Court observed that the applicant challenged the correctness of the fixing of the value of the property in question, arguing that the milk quota (Referenzmenge) issued to her had not been duly taken into account.

On 3 April 1990 the Friedberg Agricultural Office (Amt für Landwirtschaft) issued Mr. L. with a certificate according to which he had acquired, with effect as from 17 November 1989, a milk quota amounting to 7.190 kg, namely a share in the applicant's previous total milk quota proportionate to the size of the parcel of land acquired by him.

In the administrative appeal proceedings brought by the applicant, the decision of 3 April 1990 was amended to the effect that 20% of the milk quota involved would revert to the Federal Republic of Germany.

Subsequently, the applicant instituted court proceedings with the Augsburg Administrative Court (Verwaltungsgericht) against the transfer of the said milk quota. She claimed that the parcel had been transferred by forced sale without the milk quota concerned.

On 3 November 1992 the Augsburg Administrative Court dismissed the applicant's action. The Court considered that the Agricultural Office had confirmed the transfer of the milk quota involved in accordance with the relevant provisions of the Dairy Produce Quantity Regulations (Milch-Garantiemengen-Verordnung).

The Administrative Court found that the applicant's argument that the milk quota had not been rated in the expert opinion on the market value of her real estate was irrelevant on the ground that, in accordance with the relevant legal provisions, the milk quotas were in principle linked to the farm land used for dairying. Thus, in case of sale, lease or inheritance of a farm, the milk quota concerned was transferred to the person who had acquired the farm. The same applied to other forms of transfer of dairy farms to the extent that such transfers had similar legal consequences as sale, lease or inheritance. Thus, while the case of forced sale by auction was not expressly mentioned in the provision in question, the relevant milk quota was transferred as the forced sale by auction had similar legal consequences to a free sale.

On 31 March 1993 the Bavarian Administrative Court of Appeal (Bayerischer Verwaltungsgerichtshof) dismissed the applicant's appeal. The Court of Appeal confirmed the findings of the Administrative Court regarding the transfer of the milk quota concerned.

On 6 September 1993 the Federal Administrative Court (Bundesverwaltungsgericht) dismissed the applicant's request for leave to appeal on points of law (Beschwerde gegen die Nichtzulassung der Revision).

On 29 September 1994 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde). The decision was served on 12 October 1994.

B. Relevant law

1. European Economic Community regulations

There had been surpluses of milk and milk products for some considerable time. By 1984, according to the preamble of Council Regulation (EEC) no. 856/84, "quantities of milk delivered [were] increasing at a rate such that disposal of surpluses [was] imposing financial burdens and market difficulties which [jeopardised] the very future of the common agricultural policy". Amending an earlier regulation which had not proved sufficiently effective, Council Regulation (EEC) no. 856/84 (OJ (Official Journal) no. L 90 of 1 April 1984, p. 10) was adopted by the Council of the European Communities in response to these structural surpluses. The Council of the European Communities decided that for an initial period of five years the quantity of milk every dairy farmer would be allowed to produce should be limited to a fixed amount. To this end they introduced a system under which dairy farmers had to pay a penalty or "additional levy" on milk delivered in excess of their allotted quotas. It was left to the States themselves to share out their guaranteed quotas within their jurisdictions according to a formula prescribed by Council Regulation (EEC) no. 857/84 (OJ no. L 90 of 1 April 1984, p. 13).

Under Article 189 of the EEC Treaty, Council Regulations (EEC) no. 856/84 and no. 857/84 were binding in their entirety and directly applicable in all member States of the European Communities. They entered into force on 1 April 1984.

2. German legislation

The German Dairy Produce Quantity Regulations (Milch-Garantiemengen-Verordnung) of 1989, as amended in 1990, implemented the legal instruments issued by the European Communities, in the context of the organisation of the common market for milk and milk products, regarding the levies to be paid by the producer of milk for milk or milk products sold to purchasers or consumers to the extent that the quotas concerned exceeded the respective producers' quotas as granted under the guaranteed quantities on the national level. The German Dairy Produce Quantity Regulations contain detailed provisions on the calculation of the milk quotas. S. 7 of the Regulations regulates legal consequences regarding the milk quotas in case of sale, lease or inheritence of the whole or part of an agricultural estate. Thus, in case of sale or lease of part of an agricultural estate, as a rule, an equivalent share in the milk quotas passed to the purchaser or leaseholder; exceptions limiting the maximum amount of the share concerned, partly depending on the date of the sales or lease contract, or excluding the transfer of milk quotas in cases of small parts sold or leased were also stipulated. These provisions of S. 7 also applied to other legal transactions with similar legal consequences.

COMPLAINTS

The applicant complains that the decisions of the Friedberg Agricultural Office, as confirmed by the German courts, on the transfer part of her milk quota following the forced sale by auction of the applicant's parcel of land No. 385, amounted to a deprivation of her property contrary to Article 1 of Protocol No. 1 to the Convention. She submits that the relevant legal provisions on the transfer of milk quota do not apply in case of a forced sale by auction of real estate. Moreover, the German authorities failed to take duly into account that, according to the applicant, the parcel in question was destined for the production of potatoes and not for dairying.

THE LAW

The applicant complains under Article 1 of Protocol No. 1 (P1-1) to the

Convention about the transfer of part of her milk quota, following a forced sale by auction, to the purchaser of part of her real estate, namely parcel No. 385.

Article 1 of Protocol No. 1 (P1-1) reads 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."

As to the question whether or not Article 1 of Protocol No. 1 (P1-1) applies in the instant case, the Commission recalls that economic interests connected with the running of a business or trade are "possessions" for the purposes of Article 1 of Protocol No. 1 (P1-1), and the withdrawal of a licence being one of the principal conditions for the carrying on of such business may be regarded as interference with the right to the "peaceful enjoyment of one's possessions" (cf. Eur. Court HR., Tre Traktörer Aktiebolag v. Sweden judgment of 7 July 1989, Series A no. 159, p. 21, para. 53).

In this respect, the Commission has held that the applicability of Article 1 of Protocol No. 1 (P1-1) depends, inter alia, on whether the licence gives rise to a reasonable and legitimate expectation of continuing benefits from the exercise of the licensed activity. Accordingly, a licence-holder cannot be considered to have such an expectation where the conditions attached to the licence are not or no longer fulfilled or if the licence is withdrawn in accordance with the provisions of the law in force (No. 19819/92, Dec. 5.7.94, D.R. 78 p. 88).

In the present case, the applicant's farming estate, including the parcel in question, was acquired by third persons in the context of proceedings for the forced sale by auction instituted by a banking institute, the applicant's creditor. Following the forced sale, the competent agricultural authority, as confirmed by the German administrative courts, issued a certificate on the transfer of part of the milk quota previously attributed to the applicant to the person having acquired parcel No. 385 in the above forced sale, in the proportion which the parcel bore to the total size of the real estate, minus 20% which reverted to the Federal Republic of Germany.

The Commission notes that, in accordance with the relevant legal provisions, milk quotas are in principle linked to the farm land used for dairying. Accordingly, a transfer of the milk quotas is provided for if the property right or the right to exploit the farm land concerned has been acquired by a third person. Taking into account that, following the forced sale by auction of her farm estate, including parcel No. 385, the applicant no longer owned the land so as to enable her to carry on any dairying activities, the impugned transfer of the milk quota did not amount to any interference with the applicant's rights under Article 1 Protocol No. 1 (P1-1) 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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO Secretary to the First Chamber	J. LIDDY President of the First Chamber