AS TO THE ADMISSIBILITY OF

Application No. 30032/96
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 17 January 1996 by Elfriede ZACHER against Germany and registered on 1 February 1996 under file No. 30032/96;

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.

A. Particular circumstances of the case

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

In January 1986, following the termination of a lease of parcels of land used by the applicant for agricultural purposes, in particular dairying, the lessor of the land concerned, Mr. S., requested the Friedberg Agricultural Office (Amt für Landwirtschaft) to issue a certificate on the transfer of part of the milk quota (Anlieferungs-Referenzmenge) attributed to the applicant, namely a share in the applicant's previous total milk quota proportionate to the size of the parcels of land taken back by him. He submitted inter alia that having regard to his personal situation he was particularly dependent upon the milk quota involved.

On 12 August 1986 the Friedberg Agricultural Office issued Mr. S. with a certificate according to which he had acquired, with effect as from 1 October 1984, i.e. the termination of the lease, a milk quota amounting to 12.189 kg, which was deducted from the applicant's

quantity.

The applicant's administrative appeal was to no avail.

Subsequently, the applicant instituted court proceedings with the Augsburg Administrative Court (Verwaltungsgericht) against the transfer of the said milk quota. She claimed in particular that the lease contract regarding the said parcels of land had been concluded by her husband and that, therefore, the milk quota attributed to her could not be reduced following the termination of the lease.

On 9 April 1991 the Augsburg Administrative Court, upon the applicant's action, quashed the administrative decisions on the transfer of the milk quota. The Court, referring to the relevant provisions of the German Dairy Produce Quantity Regulations (Milch-garantiemengen-Verordnung) providing inter alia for the protection of leaseholders, found that Mr. S., in the pursuance of his farming activities, was not dependent on the attribution of a further milk quota of 12.198 kg in addition to his quota of already 180.000 kg.

On 6 May 1993 the Bavarian Administrative Court of Appeal (Bayerischer Verwaltungsgerichtshof), upon the defendant's appeal, quashed the Administrative Court decision of 9 April 1991, and dismissed the applicant's action. The Court of Appeal found that the provision of the German Dairy Produce Quantity Regulations providing for the protection of leaseholders upon termination of lease were null and void on the ground that they had been enacted before the entry into force of the respective EC Regulations permitting the Member States to enact such legislation. Thus, in the applicant's case the general rule on the transfer of milk quotas upon termination of the lease of a farm, or part of the quota in case of termination of the lease of parcels of land used for agricultural purposes, applied. In this context, it was irrelevant that the lease contract had been signed by the applicant's husband, as the calculation of the total milk quota attributed to the applicant as the owner of the farm had included the leased parcels of land.

On 14 February 1994 the Federal Administrative Court (Bundes-verwaltungsgericht) dismissed the applicant's request for leave to appeal on points of law (Beschwerde gegen die Nichtzulassung der Revision).

On 17 July 1995 the Federal Constitutional Court (Bundesver-fassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde). The decision was served on 26 July 1995.

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 quantity concerned exceeded the respective producers' quota 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 quota 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 quota 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 of part of her milk quota following termination of a lease of some parcels of land used for agricultural purposes amounted to a deprivation of her property contrary to Article 1 of Protocol No. 1 to the Convention.

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 termination of a lease of some parcels of land used for agricultural purposes, to the lessor of these parcels of land.

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, some parcels of land used by the applicant for agricultural purposes were taken back by the lessor following termination of the lease. Thereupon, the competent agricultural authority, as eventually confirmed by the German administrative courts, certified that part of the milk quota previously attributed to the applicant was transferred to the lessor of the parcels of land concerned, in the same proportion as the parcels bore to the total size of the real estate.

The Commission notes that, in accordance with the relevant legal provisions, the milk quota is in principle linked to the farm land used for dairying. Accordingly, a transfer of the milk quota, or part thereof, is provided for if the property right or the right to exploit the farm land concerned, or part thereof, respectively, has been acquired by a third person. Taking into account that, following the termination of the lease of the parcels of land which were taken back by the lessor, the applicant no longer had possession of these parcels of land for the purpose of pursuing any dairying activities, the impugned transfer of a part of the milk quota previously attributed to her 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