AS TO THE ADMISSIBILITY OF

Application No. 17591/90
by Waltrand ZWATZ
against Austria

The European Commission of Human Rights sitting in private on 31 March 1993, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mrs. M.F. BUQUICCHIO, Secretary to the First 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 30 August 1990 by Waltrand ZWATZ against Austria and registered on 21 December 1990 under file No. 17591/90;

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 an Austrian citizen, born in 1943 and living in Vienna. She is represented by her husband who is a civil servant.

It follows from the applicant's statements and the documents submitted by her that on 29 October 1985 the Provincial Land Reform Board (Landesagrarsenat) of the regional government of Burgenland changed at the applicant's request a consolidation plan (Zusammenlegungsplan) concerning the community of Hornstein in that a parcel of land no. 5992 allotted to the applicant on 25 October 1983 was consolidated with another parcel no. 5989 and the consolidated parcel was then divided in a different manner than before and one part re-allotted to the applicant. In this manner, the border line between the two neighbouring plots was re-defined. The applicant's request for a straightening of the border line was however not fully granted.

On appeal (Berufung) by the applicant the decision of 29 October 1985 was quashed on 1 October 1986 by the Supreme Land Reform Board of the Federal Ministry of Agriculture (Oberster Agrarsenat) and the matter referred back for a new decision.

On 15 June 1987 the Land Reform Board gave another decision tracing new limits for the applicant's plot without granting however her request to enable access for motor vehicles from two sides of the plot. It is stated in the decision that the applicant could make a U-

turn and therefore did not need access from two sides. The decision furthermore referred to two expert opinions which confirmed that the plot in question could be used for any kind of agricultural purposes and in a rational manner. It was also pointed out that the newly allotted plot was far nearer to the applicant's home than her former property.

The applicant's appeal against this decision was rejected on 4 November 1987 by the Supreme Land Reform Board .

The applicant then lodged a constitutional complaint. On 25 February 1988 the Constitutional Court (Verfassungsgerichtshof) rejected this complaint as being inadmissible and referred the matter to the Administrative Court (Verwaltungsgerichtshof).

On 28 February 1989 the Administrative Court quashed the decision of 4 November 1987 on the ground that procedural law had been violated.

On 6 September 1989 the Supreme Land Reform Board, having proceeded to supplementary investigations (two inspections of the site, one further official expert opinion and submission of a private expert opinion), again rejected the applicant's appeal. Insofar as the applicant had again alleged the plot was often watery, it was stated that this was only so in the case of exceptionally heavy rains, but drainage work carried out meantime allowed normal agricultural use. Furthermore it was considered that the consolidation measure did not negatively affect the applicant.

The applicant again lodged a constitutional complaint. The Constitutional Court rejected this complaint on 27 November 1989 stating that the decision complained of neither disclosed any appearance of a violation of the right to property nor to the right to have the dispute determined by an impartial tribunal established by law.

On 24 April 1990 the Administrative Court likewise rejected the applicant's complaints stating that the applicant's objections against the composition of the agrarian senate were unfounded. The court further notes that the lower authority had taken into account the expert opinion submitted by the applicant. It considered that the findings in the decision complained of were unobjectionable and the applicant's complaints unfounded.

COMPLAINTS

The applicant alleges that as a consequence of the consolidation proceedings she lost 6.64% of her real property. She also argues that the practicability and value of the parcel allotted to her is seriously affected by the one sided access. In this respect she invokes Article 1 of Protocol No. 1.

Furthermore she complains about the fairness and the length of the proceedings and submits that more weight was given to the opinion official expert than to her own private expert.

THE LAW

1. The applicant has mainly complained that her right to the peaceful enjoyment of possessions, as guaranteed by Article 1 of Protocol No. 1 (P1-1), was violated, alleging that the plot of land allocated to her was not adequate.

Article 1 of Protocol No. 1 (P1-1) provides:

"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 first notes that the applicant was deprived of her property and therefore para. 1 second sentence of Article 1 (Art. 1) applies. The applicant has not contested that the measure was taken on the basis of domestic law. The Commission further considers that the consolidation of agricultural land is in the public interest. Finally, as far as the question of a fair balance between the public interest of the community and the requirements of the protection of the individual's fundamental rights is concerned (cf. Eur. Court H.R., James and others judgment of 21 February 1986, Series A No. 98, p. 34, para. 50), the Commission notes that the applicant received other property in exchange which is nearer to her house than her former property. It also notes in this context that the decisions complained of were reached at on the basis of expert opinion, and further extensive investigations confirming, in the opinion of the competent judicial authorities, that the consolidation measure did not negatively affect the applicant.

It can not in these circumstances be found that the competent authorities exceeded their margin of appreciation and imposed an intolerable, excessive burden on the applicant even considering that compared to her former estate the new one was slightly smaller.

It follows that this part of the application has to 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 further invoked Article 6 (Art. 6) of the Convention arguing that she did not have access to an independent tribunal which could have examined both the factual as well as the legal issues in the dispute relating to the consolidation matter. She also complains about the length of the proceedings.

Article 6 (Art. 6) of the Convention is applicable to the proceedings in question (cf. Eur. Court H.R., Erkner and Hofauer judgment of 23 April 1987, Series A No. 117, p. 60, para. 62).

a) Insofar as the right to a fair hearing is concerned the Commission notes that the Administrative Court carefully examined the applicant's arguments but held them to be unfounded. It has not been shown that there were factual issues before the Administrative Court which it was prevented from examining. Consequently it cannot be found that the Administrative Court was in any way limited in its competence to examine the complaints raised by the applicant. It follows that the dispute on the question of whether or not the use of the applicant's property was lawfully restricted was eventually decided on the basis of a fair hearing by an impartial tribunal.

b) Insofar as the length of the proceedings is in question the Commission first notes that the starting point is 25 October 1983 when the applicant was first allotted a new parcel of land. The proceedings ended with the Administrative Court's decision of 24 April 1990 and thus lasted six years and six months.

In judging the reasonableness of the length of proceedings, regard must be had to their nature, the handling by the authorities and the applicants own conduct.

As to the nature of the proceedings here in question they seem

to have been of some complexity given that expert opinions were needed to determine the question of whether or not the property allotted the applicant replaced the previous property in an adequate manner and could be used for agricultural purposes.

The handling of the matter by the authorities appears to be unobjectionable as it was dealt with repeatedly by numerous instances, each of which dealt with the case without apparent delays. Even considering that the applicant herself did not cause any delay it cannot in the particular circumstances of the case be found that the total length of the period in question is unreasonable.

c) It follows that both complaints under Article 6 (Art. 6) have likewise to be rejected in accordance with Article 27 para. 2 (Art. 27-2) 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) — (J.A. FROWEIN)