

## THE FACTS

Whereas the facts presented by the Applicant may be summarised as follows:

The Applicant is a German national born in 1897 and at present resident in Freiburg.

The Applicant has brought a previous Application, No 2045/63 against the Federal Republic of Germany, relating to the decrease in value of a pension received from Austria as a result of the revaluation (Aufwertung) of the German mark. This Application was declared inadmissible by the Commission by its decision of 10 December 1965. During the occupation of Austria, the Applicant's flat was requisitioned and occupied by the local Commander of the French troops who he states chose it because of the unusually high standard of the furnishings. The flat was released from requisition on .. August 1948, and following the Financial Agreement of 11 October 1962, between Austria and the Federal Republic of Germany, the Applicant and his wife entered a claim for compensation under the Occupation Damages Act (Besatzungschadengesetz) of 25 June 1958.

These damages were fixed at 10,645 schillings by a decision of the State Finance Administration (Finanzlandesdirektion) for Tyrol in Innsbruck on .. February 1964. The Applicant was not satisfied and appealed to the Federal Compensation Commission (Bundesentschädigungskommission) which, on .. September 1965, fixed the compensation at 11,369.24 schillings. It was stated that no administrative appeal against this judgement was possible.

The Applicant complains that this decision offends against Article 8 (2) of the Occupation Damages Act which provides that the amount of compensation shall be calculated with reference to the level of prices at the time when the amount of the damages was fixed. Since, therefore, the price index had risen by 300 % since the date of the release of the premises from requisition the compensation awarded should have been 34,110 schillings and not 11,369.24 schillings as was actually awarded. Furthermore, the Applicant states that he was awarded average rates of compensation based on the general standard of furnishing, whereas in fact his flat had been furnished to a much higher standard. By way of example he refers to a Persian carpet worth DM 3,500 for which the compensation awarded amounted to DM 524.

The Applicant invokes Articles 8 and 14 of the Convention and in particular Article 1 of the Protocol.

## THE LAW

Whereas the decision of which the Applicant complains was taken by virtue of the Occupation Damages Act, 1958; whereas under the provisions of Article 64, paragraph (1) (Art. 64-1) of the Convention and Article 5 of the First Protocol (P1-5) any State may, when signing the Convention or depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention or the First Protocol to the extent that any law then in force in its territory is not in conformity with that provision; whereas, further, under paragraph (2) of Article 64 (Art. 64-2), any reservation shall contain a brief statement of the law concerned;

Whereas, in depositing its instrument of ratification, the Austrian Government made, inter alia, the following reservation:

(The Federal President) " ... being desirous of avoiding any uncertainty concerning the Application of Article 1 of the Protocol (P1-1) in connection with the State Treaty of 15 May 1955, for the Restoration of an Independent and Democratic Austria, declares the

Protocol ratified with the reservation that there shall be no interference with the provisions of part IV 'Claims arising out of the War' and part V 'Property, Rights and Interests' of the above-mentioned State Treaty."

Whereas under the Austrian Constitution the State Treaty of 15 May 1955, is considered to be a law and the aforesaid reserve, which refers expressly to parts IV and V of the said Treaty, appears to contain "a statement of the law concerned" sufficient for the purposes of Article 64 (Art. 64) of the Convention;

Whereas, in the present Application, the Applicant's complaints refer not to the State Treaty but to the Occupation Damages Act, 1958, which is not expressly mentioned in the Austrian reservation concerning the First Protocol (P1); whereas it is therefore necessary to consider the question whether the reservation relating to Parts IV and V of the State Treaty is sufficient to exclude the provisions of the Act of 1958 from the scope of the First Protocol (P1);

Whereas, according to Article 1 of the Act of 1958, the object of that Act is "the attribution of indemnities to persons who have acquired rights against the Allied and Associated Powers on account of damage, other than war damage, arising in Austria";

Whereas paragraph (2) of Article 24 of the Austrian State Treaty provides:

"... The Austrian Government agrees to make equitable compensation in schillings to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Austrian territory and in satisfaction of non-combat damage claims against the forces of the Allied or Associated Powers arising in Austrian territory";

Whereas it is clear from the above-cited provisions that the Act of 1958 makes provision for the same subject matter as that dealt with by Article 24, paragraph (2) of the State Treaty and whereas Article 24, paragraph (2) of the State Treaty forms part of Part IV of the said Treaty which was expressly made the subject of the Austrian reservation to the First Protocol (P1);

Whereas in the opinion of the Commission, in making a reservation with respect to Parts IV and V of the State Treaty, Austria must necessarily have had the intention of excluding from the scope of the First Protocol everything forming the subject-matter of Parts IV and V of the said Treaty; whereas it follows that the Austrian reservation relating to Parts IV and V of the said Treaty must be interpreted as intended to cover all legislative and administrative measures directly related to the subject-matter of Parts IV and V of the State Treaty; whereas this follows in particular from the fact that Parts IV and V of the said Treaty merely lay down general principles which could not be given practical effect without being completed by other legislative and administrative measures;

Whereas it follows from what has already been said that a different interpretation would deprive the reservation of all practical effect though it is clear that in making it Austria intended to exclude from the application of Article 1 of the First Protocol (P1-1) the whole subject-matter of "Claims arising out of the War" contained in Part IV of the State Treaty; whereas, moreover, in accordance with the general principles of international law, when a clause has 2 possible meanings it must be given the interpretation which would lead to its having some effect rather than an interpretation which would give it none, which would be the case here if the reservation did not cover the Act of 1958;

Whereas, therefore, the Act of 1958 falls under the Austrian reservation relating to Parts IV and V of the State Treaty and is

thereby excluded from the sphere of application of the First Protocol (P1);

Whereas it follows that insofar as the Applicant invokes Article 1 of the First Protocol (P1-1), that his Application does not come within the scope of that Article as it applies in the case of Austria and is therefore incompatible with the provisions of the Convention and must be rejected under Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the Applicant also alleges a violation of Articles 8 and 14 (Art. 8, 14) of the Convention; whereas, however, this complaint also relates to the application of the Occupation Damages Act, 1958, and therefore, for the reasons set out above likewise falls within the reservation made by the Austrian Government with regard to the First Protocol (P1) since in the circumstances it cannot be divorced from object of the reservation and the Commission could not accept this complaint without deliberately ignoring the clear purpose of the reservation; whereas in this connection the Commission refers to its decision in Application No 473/59 - X v. Austria - Yearbook II, page 400; whereas it follows that the Application is incompatible with the provisions of the Protocol (P1) as applicable in the case of Austria and must therefore be rejected under Article 27, paragraph (2) (Art. 27-2), of the Convention.

Now therefore the Commission declares this Application inadmissible.