AS TO THE ADMISSIBILITY OF

Application No. 30624/96
by A. G.
against Austria

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 24 November 1995 by A. G. against Austria and registered on 26 March 1996 under file No. 30624/96;

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 is an Austrian citizen, born in 1952 and residing at Gablitz (Lower Austria). Before the Commission she is represented by Mr. R. Soyer, a lawyer practising in Vienna.

A. Particular circumstances of the case

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

On 15 August 1992 the applicant was arrested upon an arrest warrant issued by the Investigating Judge of Vienna Regional Court (Landesgericht). She was suspected of unlawful deprivation of liberty (Freiheitsentziehung) and coercion (Nötigung).

On 16 August 1992 the Investigating Judge, after having interrogated the applicant as suspect, ordered that she be taken into detention on remand. He found that there was a risk of the applicant's absconding and of her committing further offences.

On 7 September the Public Prosecutor's Office filed a bill of indictment against the applicant charging her with unlawful deprivation of liberty and coercion.

On 9 September 1992 the applicant was released from detention on remand.

After court hearings in the criminal proceedings against the applicant before the Vienna Regional Court on 1 October 1993 and on 14 April 1994, the Public Prosecutor's Office withdrew its bill of indictment on 28 June 1994. On 4 July 1994 the Regional Court discontinued the criminal proceedings against the applicant.

On 13 January 1995 the applicant requested compensation for detention on remand under Section 2 para. 1 (b) of the Criminal Proceedings Compensation Act (Strafrechtliches Entschädigungsgesetz), on the ground that the criminal proceedings against her had been discontinued.

On 28 February 1995 the Vienna Regional Court dismissed the applicant's claim for compensation. It found that the conditions under Section 2 para. 1 (b) of the Criminal Proceedings Compensation Act had not been met. In particular, the suspicion against the applicant had not been dissipated.

On 19 March 1995 the applicant appealed and also raised a claim for compensation under Section 2 para. 1 (a) of the Criminal Proceedings Compensation Act, on the ground that her detention on remand had been unlawful.

On 18 May 1995 the Vienna Court of Appeal (Oberlandesgericht) dismissed the applicant's appeal. It considered that the criminal proceedings had been discontinued as no sufficient evidence could be produced since the main witness, the victim M.T., had meanwhile left Austria and was of unknown abode, but that, nevertheless, a suspicion persisted.

On 12 June 1995 the Court of Appeal dismissed the applicant's compensation claim under Section 2 para. 1 (a) of the Criminal Procedure Compensation Act. The Court of Appeal found that the applicant was not entitled to compensation under this head as her detention on remand had been lawful.

On 5 July 1995 the applicant appealed against the Court of Appeal's decision of 12 June 1995 to the Supreme Court (Oberster Gerichtshof).

On 22 August 1995 Supreme Court dismissed the applicant's appeal and confirmed the findings of the Court of Appeal.

B. Relevant domestic law

The Criminal Proceedings Compensation Act (Strafrechtliches Entschädigungsgesetz) provides for compensation for pecuniary loss resulting from detention on remand. The conditions to be met are laid down in SS. 2 and 3. S. 2 para. 1 (a) relates to the case of unlawful detention on remand. S. 2 para. 1 (b) specifies as conditions that the accused has been acquitted, or that the proceedings against him have been otherwise discontinued and that the suspicion that he has committed the offence in question no longer subsists, or that there is a bar to prosecution which already existed at the time of his detention.

S. 6 para. 1 stipulates that when a court orders or prolongs detention on remand, the superior court is competent to decide whether the conditions of S. 2 para. 1 (a) and S. 3 are met. S. 6 para. 2 stipulates that where a person is acquitted or criminal proceedings against him are discontinued by a court, the same court is competent to decide whether the conditions of S. 2 para. 1 (b) and S. 3 are met. In these proceedings the detained person has to be heard and, if necessary, evidence has to be taken. According to S. 6 para. 4 a

decision on a compensation claim under S. 2 para. 1 has to be served on the person concerned but not to be made public. The detained and the Prosecutor's Office have a right to appeal to the superior court which can take, if necessary, further evidence. The final decision in these proceedings is binding on the civil courts.

If the said courts find that the conditions under SS. 2 and 3 are met, the person concerned has to file a request with the Department of Finance (Finanzprokuratur) for acknowledgment of his claim. If there is no decision upon his request within six months or if his claim is partly or fully refused, the person concerned has to institute civil court proceedings against the Republic of Austria (SS. 7 and 8).

COMPLAINTS

The applicant complains under Article 6 para. 2 of the Convention that the Austrian courts disregarded the presumption of innocence when refusing her claim for compensation in that they found that a suspicion against her continued to exist, despite the discontinuation of proceedings.

THE LAW

The applicant complains under Article 6 para. 2 (Art. 6-2) of the Convention that the Austrian courts disregarded the presumption of innocence when refusing her claim for compensation.

Article 6 para. 2 (Art. 6-2) of the Convention reads as follows:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Commission, assuming that the applicant has complied with the six months' time-limit under Article 26 (Art. 26) of the Convention, notes that on 4 July 1994 the criminal proceedings against the applicant were discontinued and that the applicant filed her requests for compensation regarding her detention on remand on 13 January and 19 March 1995. The decisions of the Vienna Regional Court and the Vienna Court of Appeal refusing these requests were a direct sequel to the discontinuation of the criminal proceedings against the applicant. Consequently, Article 6 para. 2 (Art. 6-2) may in principle be invoked with regard to the impugned decisions (cf. Eur. Court HR, Englert v. Germany judgment of 25 August 1985, Series A no. 123, p. 54, para. 35; Nölkenbockhoff v. Germany judgment of 25 August 1985, Series A no. 123, p. 79, para. 35).

The Commission recalls that, following the discontinuation of criminal proceedings, only statements which reflect the opinion that the person concerned is guilty, and not statements which merely describe a state of suspicion, infringe the presumption of innocence (cf. Eur. Court HR, Minelli v. Switzerland judgment of 25 March 1983, Series A no. 62, p. 18, para. 37; Lutz v. Germany judgment of 25 August 1987, Series A no. 123, pp. 24-26, paras. 58-64; Sekanina v. Austria judgment of 25 August 1993, Series A no. 266, pp. 13-15, paras. 24-30).

In the present case, the Austrian courts dismissed the applicant's compensation claim under Section 2 para. 1 (b) of the Criminal Proceedings Compensation Act on the ground that, although the criminal proceedings against her had been discontinued, a suspicion persisted. The applicant has failed to show that the reasoning of the Austrian courts amounted to any finding of criminal guilt.

The applicant's submissions in this respect do not, therefore, disclose any appearance of a violation of the applicant's rights under Article 6 para. 2 (Art. 6-2) 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