AS TO THE ADMISSIBILITY OF

Application No. 25342/94
by A.R.
against Austria

The European Commission of Human Rights sitting in private on 4 September 1995, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY

G. RESS

A. PERENIC

P. LORENZEN

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 September 1994 by A.R. against Austria and registered on 28 September 1994 under file No. 25342/94;

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

The applicant, born in 1969, is a Russian national. She was held in provisional detention at the Wels Regional Court (Landesgericht). On 27 September 1994 she was extradited to the Russian Federation, where she is currently detained at Severodvinsk prison. In the proceedings before the Commission, she is represented by Dr. J. Lachmann, a lawyer practising in Vienna.

A. The particular circumstances of the case

In December 1991 the applicant came to Austria, where she requested asylum. Her request was subsequently rejected.

On 5 June 1992 the authorities of the Russian Federation transmitted an international warrant of arrest of 29 March 1992 to the Austrian authorities. It had been issued by the Prosecutor General of Severodvinsk, Russian Federation, and stated that the applicant was suspected of having, on 7 January 1991, in Severodvinsk, together with two accomplices, killed the manager of a firm, whose position she allegedly wanted to acquire.

On 9 June 1992 the applicant was arrested.

On 10 June 1992 the Wels Regional Court ordered the applicant's provisional detention (Auslieferungshaft). On the same day, she was heard by the investigating judge (Untersuchungsrichter). She submitted in particular that she had been in Moscow in January 1991, that she did not know D. and S., who had allegedly been her accomplices. Nor did she know P., the victim.

On 24 August 1992 the embassy of the Russian Federation formally requested the Austrian authorities to extradite the applicant on the suspicion of having committed murder under SS. 17 and 103 of the Penal Code of the Russian Federation, together with two accomplices, namely D. and S.

On 16 September 1992 the applicant was again heard by the investigating judge at the Wels Regional Court. She stated that she herself as well as D. and S. and the victim P. had worked at the firm at issue. She had seen P. for the last time in the morning of 7 January 1991. However, she had nothing to do with the murder, and had only learned from D. on 16 January 1991 that P. was dead. D. had threatened her and ordered her to remain silent. In August 1991 she was heard by the police in connection with the murder. Subsequently, she left Russia, as she was afraid of D. and S.

On 17 November 1992 the applicant married an Austrian national, who is a businessman by profession.

On 4 December 1992 the embassy of the Russian Federation submitted a number of documents in support of the request to extradite the applicant. They contained in particular a judgment of the People's Court of Severodvinsk of 9 October 1992, convicting D. and S. of murder under S. 103 of the Penal Code of the Russian Federation and sentencing them to nine years' and eight years' imprisonment respectively. The said court found that they had killed P. on 7 January 1991. The judgment also mentions the role of the applicant, who according to the court's findings helped D. and S. in that she asked P. to come to the office and later assisted them in disfiguring and hiding the corpse. The documents further contained minutes of the questioning of several witnesses.

On 29 December 1992 the Linz Court of Appeal (Oberlandesgericht), declared that the applicant's extradition was permitted under the Austrian Extradition Act (Auslieferungs- und Rechtshilfegesetz) inter alia under the condition that the death penalty should not be applied.

The Court referred to the warrant of arrest of 29 March 1992 and noted that a copy of SS. 17 and 103 of the Penal Code of the Russian Federation had been attached to it. According to these provisions, murder was punishable with three to ten years' imprisonment. Therefore, the applicant's fear of being subjected to the death penalty was unfounded. The Court noted that the applicant had not made a confession. However, she had confirmed that she was the person described in the warrant of arrest. The Court found that there were no objections against the suspicion as described in the warrant and other documents submitted by the Procurator General of the Russian Federation in support of the request for extradition. According to these documents, two witnesses had made statements incriminating the applicant.

The Court also considered that the applicant's extradition would not constitute undue hardship within the meaning of S. 22 of the Extradition Act. In view of the seriousness of the crime at issue, her

extradition was necessary, notwithstanding the fact that she was married to an Austrian national. Finally, the Court stated that it had no reasons to fear that the criminal proceedings in the Russian Federation would not comply with the requirements of Articles 3 and 6 of the Convention or that a penalty which would fall within the scope of Article 3 would be imposed or executed.

Prior to this decision the Court of Appeal had held two hearings on 15 and 29 December 1992 in the presence of the applicant and her counsel. At the end of the second hearing the above decision was read out, and the main reasons were given orally. The decision and its reasons were also translated into Russian.

Also on 29 December 1992, after the Court's decision had been taken, the applicant attempted suicide.

On 5 January 1993 the Austrian Minister of Justice (Bundesminister für Justiz) gave his approval for the applicant's extradition subject to the condition that the death penalty must not be applied. Further, should it turn out that the act she was suspected of constituted another crime than the one she was extradited for, she could only be tried if extradition would also be admissible with regard to the latter crime. It appears that the Minister, in accordance with S. 34 para. 4 of the Extradition Act, informed the Linz Court of Appeal of his decision. By note of 14 January 1993 this Court in turn informed the Wels Regional Court of the decision. However, the decision was not served on the applicant or her counsel.

On 12 January 1993 the Linz District Court (Bezirksgericht), after having heard the applicant and having regard to a psychiatric expert opinion, ordered the applicant's detention in the W.-J. psychiatric hospital in Linz.

The psychiatric expert, Dr. S., in his opinion filed on 9 January 1993, stated that the applicant suffered from a serious mental disturbance. In the situation of her detention and her imminent

return to Russia, a suicidal tendency had evolved and had resulted in her attempted suicide, which had to be regarded as genuine. He concluded that the applicant's disturbance constituted a mental illness and that there was still a serious risk of further suicide attempts.

The Court, referring to the expert opinion, found that the applicant suffered from a mental illness and that the continuing suicide risk warranted her detention in a psychiatric hospital. Her detention was originally ordered for a month and was later prolonged.

On 5 February 1993 the Wels Regional Court, on the applicant's request, decided to stay her extradition in accordance with S. 37 of the Extradition Act. The Court, referring to a further expert opinion, which had confirmed that the applicant suffered from a depressive reaction with suicidal tendencies and that she needed psychiatric treatment for five or six weeks, found that she was not fit for transport.

On 1 March 1993 the Linz Court of Appeal dismissed the applicant's request of 15 January 1993 for reopening of the extradition proceedings, referring to the danger of suicide, her marriage and the fear that the death penalty would be imposed.

The Court of Appeal had regard to the expert opinion, filed by Dr. M. on 4 February 1993, according to which the applicant suffered from a depressive syndrome. He noted that, according to the applicant and the file of the W.-J. psychiatric hospital, her previous medical history did not show any particularities. Although her depression also had a hereditary and a personality-dependent element, the reactive element was decisive, as the syndrome had been caused by the strain the current situation put on her. Her suicidal tendencies, which subsisted, were also caused by this situation. The Court, referring to this expert opinion, found that the applicant suffered from a depression which had been intensified by the difficult circumstances. Further, her suicidal tendency subsisted. The Court noted that the Senior Public Prosecutor's Office, in view of the applicant's problems of mental health, had

supported her request.

However, a reopening of the extradition proceedings was only possible in case new facts had arisen. The applicant's attempted suicide, which was her reaction to the decision to extradite her, did not constitute a new fact within the meaning of the Extradition Act. Further, the question whether her extradition would constitute undue hardship within the meaning of S. 22 of the Extradition Act had already been examined in the preceding extradition proceedings. The Court repeated that the applicant was suspected of a capital crime and, although she was married to an Austrian, had not been resident in Austria for a long time.

On 2 April 1993 the applicant escaped from the W.-J. psychiatric hospital. Subsequently, she stayed with her husband in various places, mainly in Italy and Slovenia. In the summer of 1994 she came back with her husband to Austria.

On 23 July 1994 the applicant was rearrested and was subsequently taken into provisional detention at the Wels Regional Court.

On 24 July 1994 the applicant was again admitted to the W.-J. psychiatric hospital. According to a file note prepared by the investigating judge at the Wels Regional Court on 26 July 1994, the following happened on that day: Officers of the Regional Court's prison tried to take the applicant back to the Court's prison. However, the applicant resisted and finally had to be given tranquillizers. The competent doctor, Dr. A., was called. According to her diagnosis, which she gave on the telephone, the applicant did not suffer from a psychosis. Rather her conduct was a reaction to the detention and constituted a learned and deliberate behaviour on her part. Dr. A also announced that the applicant would be examined by a commission of doctors. However, her further detention at the psychiatric hospital would probably not be justified.

By letter of 28 July 1994 the psychiatric hospital informed the

Wels Regional Court that the applicant had been examined by Dr. C. and that her further detention at the psychiatric hospital was not justified.

On 3 August 1994 the applicant again requested the Linz Court of Appeal to reopen the extradition proceedings. She submitted that meanwhile a much stronger relationship had evolved between her and her husband. In particular, S. 22 of the Extradition Act had to be interpreted in the light of Article 8 of the Convention. Her extradition was not necessary for the prevention of disorder or crime, as she would have to be put to trial in Austria in accordance with S. 65 para. 1 of the Penal Code (Strafgesetzbuch). Further, her husband could hardly be expected to follow her to Siberia.

On the same day, she also requested the Linz Court of Appeal to serve its decision of 29 December 1992 concerning her extradition on her.

On 5 September 1994 the Linz Court of Appeal, after having heard the applicant and her husband, dismissed the applicant's request.

The Court found that the development of a much closer relationship between her and her husband might be regarded as a new fact. However, it was not sufficient to raise doubts as to the correctness of the decision to extradite her. In this context, the Court noted that the question whether the applicant's extradition would constitute undue hardship within the meaning of S. 22 of the Extradition Act. S. 22 of the said Act required weighing the particular circumstances invoked by the person to be extradited against the seriousness of the crime. Given that the applicant was suspected of one of the most serious crimes, i.e. of murder, the decision had to be in favour of her extradition.

Moreover, the Court considered that only the applicant's absconding from the psychiatric hospital had given her and her husband the possibility to live together. However, they had no normal married

life, in particular they had not shared a common household. They had seen each other frequently, albeit always in fear of being detected. Their relationship did not constitute family life within the meaning of Article 8. In any case, given the seriousness of the crime at issue, an interference would be justified within the meaning of the second paragraph of this Article.

On 23 September 1994 the authorities of the Russian Federation informed the Austrian authorities that they were ready to take over the applicant on 27 September 1994 at the Vienna airport.

On 26 September 1994 the decision of 29 December 1992 by the Linz Court of Appeal was served on the applicant's counsel. In a letter accompanying this decision, the Wels Regional Court informed the applicant that a copy of the decision by the Minister of Justice of 5 January 1993 was not in the file. However, the Court attached a note of 14 January 1993, in which the Linz Court of Appeal had informed it of the said decision and briefly summarised its contents.

Also on 26 September 1994 the investigating judge at the Wels Regional Court made the necessary arrangements for handing the applicant over to the Russian authorities.

In the evening of 26 September 1994 the applicant made a further attempt to commit suicide by taking an overdose of tranquillizers. She was first admitted to a hospital where measures to prevent the intoxication were taken. Then she was again brought to the W.-J. psychiatric hospital. According to a file note of 27 September 1994 by the investigating judge at the Wels Regional Court, the doctor on duty at the psychiatric hospital informed him in the evening of 26 September 1994 by telephone that the applicant was kept under surveillance on account of the overdose she had taken but that there was nothing militating against handing her over to the Russian authorities.

On 27 September 1994 at 10 a.m. the applicant was transported to

Vienna airport by an ambulance. In view of her resistance at the departure, she had to be given tranquillizers. She was accompanied by a doctor and two officers of the Wels Regional Court's prison. She left Vienna by plane at 1.30 p.m.

On 10 October 1994 the applicant's counsel filed a complaint (Beschwerde) with the Wels Regional Court. He submitted in particular that the decision of 5 February 1993 to stay the applicant's extradition on account of her state of mental health had been taken without any time-limit and was therefore still valid. No decision to the contrary had been taken. Moreover, the circumstances of the applicant's extradition, which had taken place only a few hours after her attempt to commit suicide and involved her transport to the airport by an ambulance under the influence of tranquillizers, violated Article 3 of the Convention.

On 28 October 1994 the Review Chamber (Ratskammer) of the Wels Regional Court dismissed the applicant's complaint. It considered that the decision of 5 February 1993 to stay the applicant's expulsion had relied on an expert opinion, according to which the applicant was not fit for transport and needed psychiatric treatment for a period of five to six weeks. Thus, the decision had to be understood as staying the applicant's expulsion for that period. Moreover, on 2 April 1993 the applicant had fled from the psychiatric hospital and thus proved fit for transport. As regards the complaint about the circumstances of her extradition, the Review Chamber found that they were not in breach of Article 3. It referred to the opinion of the doctor on duty, as reflected in the file note of 27 September 1994, namely that there was nothing militating against handing the applicant over to the Russian authorities. Moreover, a doctor had accompanied her on the way to the airport.

On 24 January 1995 the Austrian Consul General visited the applicant at the prison in Severodvinsk. He reported that she shared a cell with ten to twelve other persons, that she lived on vegetarian food, the supply of which was rather modest and that she complained

about rheumatism and kidney trouble. The Consul General had also invited the Russian authorities to report on the applicant's state of health.

By letter of 15 March 1995, the Ministry for Foreign Affairs of the Russian Federation informed the Austrian authorities that the competent court had twice dismissed the applicant's requests for release. The applicant had also pointed out that her state of health was deteriorating and thereupon she had been examined by a specialist, who found that she did not need to be hospitalised. However, she was regularly receiving medical treatment.

B. Relevant law and practice

I. Austrian law

If, as in the present case, there is no extradition treaty between Austria and the requesting State the Austrian Extradition Act, as amended in 1992 (Auslieferungs- und Rechtshilfegesetz, idF BGBl 1992/756), applies. Its provisions, as in force at the relevant time, may be summarised as follows.

According to S. 9, the provisions of the Code of Criminal Procedure (Strafprozeßordnung) apply to the extradition proceedings, if not stated otherwise.

According to S. 10 extradition is admissible, on the request of another State, inter alia, if a person shall be prosecuted for a criminal offence. The criminal offence must be punishable with more than one year's imprisonment according to the law of the requesting State (S. 11).

Extradition has to be refused if there are reasons to fear that the criminal proceedings in the requesting State will not meet the requirements of Articles 3 and 6 of the Convention or that the penalty or its execution will be contrary to Article 3 of the Convention

(S. 19).

An extradition for the prosecution of a crime punishable by the death penalty according to the law of the requesting State, may only be permitted if it is guaranteed that the death penalty will not be imposed (S. 20).

According to S. 22, extradition may not be permitted if it would, taking the seriousness of the crime into account, constitute undue hardship for the person concerned, on the ground that he or she had been resident in Austria for a long time or for other personal reasons.

According to S. 33 the court of second instance has to decide whether the extradition is to be permitted. The court sits in private unless the Senior Public Prosecutor's Office or the person concerned requests a public hearing (para. 1). At the hearing, the person to be extradited has to be represented by counsel (para. 2). The court decides by a formal decision, which shall be reasoned. It shall be pronounced orally by the presiding judge. There is no appeal from the decision (para. 5). The court of second instance has to transmit its decision as well as the file to the Minister of Justice (para. 6).

According to S. 34, the final decision on a request for extradition lies with the Minister of Justice. However, he may not permit an extradition if the court of second instance has found against it. The Minister has to take the interests of Austria into account, its obligations under international law, in particular as regards asylum law, and the protection of human dignity (para. 1). He shall communicate his decision to the requesting State, and to the court of second instance, which shall, through the court of first instance, ensure that the person concerned, and his or her counsel, are informed of this decision (para. 4).

The investigating judge at the court of first instance has to make the necessary arrangements for the extradition (S. 36 para. 1).

According to S. 37 para. 1, an extradition has to be stayed, inter alia, if the person concerned is not fit for transport, or in case of reopening of the proceedings.

The court of second instance has to quash its decision permitting an extradition if new facts are submitted, which, alone or in connection with the documents already submitted in support of the request for extradition, raise serious doubts as to the correctness of this decision (S. 39).

S. 65 para. 1 of the Penal Code (Strafgesetzbuch) provides that the Austrian penal laws apply with regard to crimes which are punishable under the law of the State where they were committed, if the offender is a national of another country, has been arrested in Austria and cannot be extradited for a reason other than the type or quality of the offence.

II. Law of the Russian Federation

S. 102 of the Penal Code of the Russian Federation provides that murder, i.e. premeditated killing of a person, committed under aggravating circumstances, (e.g. for motives of self-interest, or with particular cruelty) is punishable by eight to fifteen years' imprisonment, with or without banishment, or by the death penalty.

According to the Amnesty International Report 1994, S. 102 is still in force; however, there were amendments in April 1993, according to which women are exempted from the death penalty.

S. 103 provides that murder, committed without aggravating circumstances within the meaning of S. 102, is punishable by three to ten years' imprisonment.

According to S. 17 each accomplice shall be punished with regard to his or her contribution to the crime.

COMPLAINTS

1. The applicant complains under Article 2 of the Convention and Protocol No. 6 that her extradition puts her at the risk of being sentenced to death in the Russian Federation. She further submits that there is no guarantee that capital punishment will not be applied, as referred to in the decision by the Minister of Justice of 5 January 1993.

2. The applicant complains under Article 3 of the Convention that her extradition amounts to inhuman and degrading treatment. She refers to her mental illness, which already caused her to attempt suicide. Further, she submits that she would not have access to the necessary medical treatment in a prison in Severodvinsk, Siberia. In her situation, she would particularly suffer from the permanent fear of being sentenced to death.

3. The applicant complains under Article 8 of the Convention that her extradition violates her right to respect for her private and family life. In particular, she submits that her extradition is likely to terminate her relationship with her husband, who could not possibly follow her to Siberia. Moreover, given her state of mental health, her extradition exposes her to the risk of committing further attempts of suicide.

4. The applicant complains under Article 6 that the most important decisions in the extradition proceedings were not served on her or her counsel, i.e. the decision by the Minister of Justice of 5 January 1993, or only very late, i.e. the decision of the Linz Court of Appeal of 29 December 1992.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 September 1994 and registered on 28 September 1994.

On 17 October 1994 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 17 February 1995 after an extension of the time-limit fixed for that purpose. The applicant replied on 6 April 1995.

THE LAW

The applicant complains about various aspects of her extradition to the Russian Federation. She invokes Article 2 (Art. 2) of the Convention and Protocol No. 6 (P6), as well as Articles 3, 6 and 8 (Art. 3, 6, 8) of the Convention.

a. Preliminary question under Article 26 (Art. 26) of the Convention

The Government submit that the applicant failed to introduce her complaint within the six-months' period laid down in Article 26 (Art. 26) of the Convention. They argue that the decision by the Linz Court of Appeal of 29 December 1992 has to be regarded as the final domestic decision within the meaning of this provision. This decision, including its translation into Russian, was announced orally to the applicant and her counsel on the day it was taken. According to S. 33 para. 5 of the Austrian Extradition Act, there was no need to serve a written version of the decision on them, as there were no remedies available against it. Moreover, in accordance with S. 34 para. 4 of the said Act, there was no need to serve the decision of 5 January 1993 by the Minister of Justice on her. Finally, according to the Government, the applicant's requests for reopening of the proceedings are irrelevant under Article 26 (Art. 26), as they cannot be considered as an effective remedy.

The applicant contests the Government's view. She submits in particular that, contrary to S. 34 para. 4 of the Extradition Act, the

decision of 5 January 1993 by the Ministry of Justice was never served on her. Furthermore, she points out that her present application relates mainly to facts which did not even exist when the decision of the Linz Court of Appeal was taken on 29 December 1992, namely her state of mental health following her attempt to commit suicide and her married life. At that time, she would thus not have been able to raise the complaints she is now bringing before the Commission. She argues that in the particular circumstances of her case, 5 September 1994, i.e. the date when her request for reopening of the proceedings was dismissed, should, therefore, be taken as the starting point for the calculation of the six-months' period under Article 26 (Art. 26).

The Commission does not have to resolve the question whether the applicant has complied with the six-months' rule, as her complaints are in any case inadmissible for the reasons set out below.

b. Article 2 (Art. 2) of the Convention and Protocol No. 6 (P6)

The applicant complains under Article 2 (Art. 2) of the Convention and under Protocol No. 6 (P6) that her extradition puts her at the risk of being sentenced to death in the Russian Federation.

The Government submit that the approval of the applicant's extradition was subject to the condition that the death penalty should not be applied and that the authorities of the Russian Federation had not objected to this condition. Moreover, the Government note that murder is, according to S. 103 of the Penal Code of the Russian Federation, punishable by three to ten years' imprisonment and that the applicant's alleged accomplices have actually been sentenced to up to nine years' imprisonment.

According to the applicant, the fact that the Government of the Russian Federation have not objected to the conditions attached to her extradition is not a sufficient guarantee. In particular, there is nothing to prevent the courts from convicting her of murder with

aggravating circumstances under S. 102 of the Penal Code of the Russian Federation, which may carry a death sentence.

The Commission recalls that Article 2 (Art. 2) of the Convention does not prohibit capital punishment. However, Article 1 of Protocol No. 6 (P6-1) provides that the death penalty shall be abolished and that no one shall be condemned to such a penalty or executed. Thus, the question arises whether this provision, like Article 3 (Art. 3) of the Convention, engages the responsibility of a Contracting State where, upon extradition, the person concerned faces a real risk of being subjected to the death penalty in the receiving State. However, the Commission need not resolve this issue, since the complaint is in any event manifestly ill-founded.

In the present case the Linz Court of Appeal, in its decision of 29 December 1992, noted that the applicant was suspected of murder committed together with two accomplices under SS. 17 and 103 of the Penal Code of the Russian Federation, which provides for three to ten years' imprisonment. The Commission has also had regard to the fact that the applicant's co-accused were convicted under S. 103 of the said Penal Code and sentenced to up to nine years' imprisonment. It is true that S. 102 of the Penal Code of the Russian Federation, concerning murder under aggravating circumstances, provides for the death penalty. However, there are no indications that S. 102 would be applied in the applicant's case. Moreover, amendments were made to the Penal Code of the Russian Federation in April 1993, exempting women from the death penalty.

In these circumstances, the Commission finds that there are no substantial grounds for believing that the applicant faces a real risk of being subjected to the death penalty in the Russian Federation.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

c. Article 3 (Art. 3) of the Convention

The applicant also complains under Article 3 (Art. 3) of the Convention that her extradition amounts to inhuman and degrading treatment, in particular on account of her state of mental health.

Article 3 (Art. 3) reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government submit that the applicant, following her rearrest, was again brought to a psychiatric hospital on 24 July 1994 having regard to the expert opinion of February 1993. The doctors found that she was not suffering from a psychosis but that her reaction to her imprisonment constituted learned and deliberate behaviour to avoid her extradition. Subsequently, the psychiatric hospital refused to hold her. Thus, the applicant was no longer suffering from a mental illness making her extradition inadmissible. Further, her suicide attempt of 26 September 1994 did not represent the symptom of an illness but was intended to prevent her lawful extradition. Thus, the fact that she was, after long and complex extradition proceedings, actually handed over to the Russian authorities on 27 September 1994, cannot be regarded as a violation of Article 3 (Art. 3). Finally, as regards the prison conditions in Severodvinsk the Government point out that the Austrian Consul General visited the applicant in prison on 24 January 1995 and that the Russian authorities were invited to report on her state of health.

The applicant refers in particular to the expert opinions which were filed in early 1993 and showed that she suffered from a mental illness, i.e. a depressive syndrome with suicidal tendencies. Furthermore, she submits that none of the recent information, on which the Government rely, supports the conclusion that she no longer suffers from that mental illness. In her application, which was introduced before her extradition, the applicant also submitted that she would not

have access to the necessary medical treatment in a prison in Severodvinsk, Siberia, and that she would particularly suffer from the permanent fear of being sentenced to death. Finally, she points out that her state of mental health was such that her transport to the airport on 27 September 1994, following her further attempt to commit suicide, had to be carried out by an ambulance and in the presence of a doctor.

The Commission recalls that an extradition may give rise to an issue under Article 3 (Art. 3) where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 35, para. 91). Further, any ill-treatment must attain a minimum level of severity to fall within the scope of Article 3 (Art. 3). In assessing this minimum, regard is to be had to all the circumstances of the case, including the physical or mental effects of the treatment or punishment at issue, and in some instances the sex, age and state of health of the victim (Soering judgment, loc. cit., p. 39, para. 100, with further references).

In the above-mentioned Soering judgment, the Court found that the envisaged extradition of Mr. Soering would be in breach of Article 3 (Art. 3) because of the circumstances relating to the death penalty which he risked to be sentenced to, namely, inter alia, the "death row phenomenon" (Soering judgment, loc. cit., pp. 36-45, paras. 92-111). In the present case the Commission refers to its above finding that the applicant does not face a real risk of being sentenced to death. What remains to be examined is the applicant’s submission that her state of mental health was such that her extradition amounted to treatment contrary to Article 3 (Art. 3).

The applicant was arrested in June 1992 with a view to her extradition. The Commission notes that the applicant did not make any allegations as regards previous mental problems. Following her attempt of 29 December 1992 to commit suicide, the Austrian courts requested

two psychiatric experts to file written opinions. They found that the applicant suffered from a mental illness, namely a depressive syndrome, which was caused by the strain due to her imminent extradition to Russia and had resulted in her attempted suicide. The applicant was, therefore, transferred from prison to a psychiatric hospital, from which she escaped in April 1993.

Following her rearrest, the applicant was again admitted to the same psychiatric hospital on 24 July 1994. On this occasion, the competent doctor, Dr. A., found that she did not suffer from a psychosis, but that her conduct was a reaction to the detention and constituted a learned and deliberate behaviour on her part. Only a few days later the psychiatric hospital informed the competent court that she had been examined by another doctor, Dr. C., and that her detention at the psychiatric hospital was no longer justified. When, following her attempt to commit suicide on 26 September 1994, she was brought to the psychiatric hospital again, the doctor on duty informed the investigating judge that there was nothing militating against handing her over to the Russian authorities. The following day, she was given tranquillizers in view of her resistance against being brought to Vienna airport. Finally, her transport was carried out by an ambulance in the presence of a doctor.

On the basis of the material before it, the Commission finds that it is not established that the applicant's mental illness persisted in 1994 when she was rearrested and finally extradited. Given these findings, the Commission further considers that the circumstances under which her extradition was carried out did not go beyond the inevitable element of suffering or humiliation connected with the legitimate execution of the decision to extradite her (see, mutatis mutandis, Eur. Court H.R. Tyrer judgment of 25 April 1978, Series A no. 26, pp.14-15, paras. 29-30).

Furthermore, the Commission recalls that the existence of the risk of ill-treatment must be assessed primarily with reference to those facts which were known or ought to have been known to the

Contracting State at the time of the expulsion. The Convention organs are not precluded, however, from having regard to information which comes to light subsequent to the expulsion. This may be of value in confirming or refuting the appreciation that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears (Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, Series A no. 215, p. 36, para. 107). In this context, the Commission notes the report of the Austrian Consul General, who visited the applicant in prison in Severodvinsk on 24 January 1995, and the report of 15 March 1995 by the Russian authorities. There is nothing in these documents to show that the applicant does not receive the necessary medical treatment or that the general conditions pertaining in the prison would be inhuman.

In conclusion, the Commission finds that the treatment complained of did not go beyond the threshold set by Article 3 (Art. 3) of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

d. Article 8 (Art. 8) of the Convention

The applicant complains under Article 8 (Art. 8) that her extradition violated her right to respect for her private and family life.

As far as relevant, Article 8 (Art. 8) reads as follows:

"1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ..... for the prevention of disorder or crime ...."

The Government submit that the relationship between the applicant and her husband cannot be regarded as "family life" within the meaning of Article 8 (Art. 8). In this context, they point out that the marriage was concluded while the applicant was already in prison. Even after her escape from prison, the spouses did not live together but have only seen each other occasionally. However, even assuming that there was family life, the interference was justified under the second paragraph of Article 8 (Art. 8), as being necessary for the prevention of crime. The Government submit in particular that there was a reasonable suspicion against the applicant of having participated in the crime, namely murder, in connection with which she was extradited. The interest in the prosecution of this crime outweighed the applicant's interest in her family life.

The applicant contests the Government's view. She submits that her extradition constituted an interference with her right to respect for her family life, as it separated her from her husband, who could not possibly follow her to Siberia. Further, it was not necessary, as the criminal proceedings against her could also have been conducted in Austria, in accordance with S. 65 of the Austrian Penal Code. Moreover, given her state of mental health, her extradition exposed her to the risk of committing further attempts of suicide.

The Commission finds that the decision to extradite the applicant constitutes an interference with her right to respect for her private and family life.

Such an interference is in breach of Article 8 (Art. 8), unless it is justified under paragraph 2 of this Article as being "in accordance with the law" and "necessary in a democratic society" for one of the aims set out therein.

As regards the lawfulness of the measure complained of, the Commission finds that the decision to extradite the applicant was based on the Austrian Extradition Act, which permits extradition if a person

it to be prosecuted for a criminal offence punishable by more than one year's imprisonment. The Linz Court of Appeal and the Minister of Justice, when taking their decisions of 29 December 1992 and 5 January 1993 respectively, had extensive material submitted by the authorities of the Russian Federation before them. According to these documents, the applicant was suspected of having committed murder together with two accomplices, an offence which is punishable by three to ten years' imprisonment under Russian law. Therefore, the decision to extradite the applicant was in accordance with Austrian law.

Moreover, the Commission finds that the interference served one of the legitimate aims listed in Article 8 para. 2 (Art. 8-2), namely the prevention of disorder or crime.

As regards the question whether the interference was necessary, the Commission recalls that the notion of necessity implies a pressing social need and requires that the interference at issue be proportionate to the legitimate aim pursued (Eur. Court H.R., Beldjoudi judgment of 26 March 1992, Series A no. 234-A, p. 27, para. 74).

Firstly, as regards the applicant's submission that the interference with her private life was not justified, because her extradition exposed her to a risk of suicide, the Commission takes into account that a person's "private life" includes his or her physical integrity (Eur. Court H.R., X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, para. 22). However, in view of its findings under Article 3 (Art. 3), the Commission considers that the applicant was not in such an impaired state of mental health that her extradition would appear disproportionate.

Secondly, as regards the interference with the applicant's family life, the Commission notes that the Linz Court of Appeal, in its decision of 29 December 1992, had regard to the fact that the applicant was married to an Austrian national. Having regard to the seriousness of the crime of which she was suspected, the Court found that her extradition would not constitute undue hardship within the meaning of

the Austrian Extradition Act. The Court repeated these considerations in its decisions of 1 March 1993 and 5 September 1994, when dismissing the applicant's requests for reopening of the extradition proceedings in which she had also relied on the fact of her marriage to an Austrian national. The Commission agrees that the interference with the applicant's family life was proportionate to the legitimate aim pursued, given the seriousness of the crime, of which the applicant was suspected even before she contracted marriage in Austria.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

e. Article 6 (Art. 6) of the Convention

Finally, the applicant complains under Article 6 (Art. 6) that the most important decisions in the extradition proceedings were not served on her or her counsel, i.e. the decision by the Minister of Justice of 5 January 1993, or only very late, i.e. the decision of the Linz Court of Appeal of 29 December 1992.

The Commission recalls that extradition proceedings do not fall within the scope of Article 6 (Art. 6) (No. 13930/88, Dec. 11.3.89, D.R. 60 p. 272).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2 (Art. 27-2) .

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (S. TRECHSEL)