AS TO THE ADMISSIBILITY OF

Application No. 19744/92
by Mehmet Ali ARSLAN
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 17 May 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

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 27 September 1990 by Mehmet Ali ARSLAN against Austria and registered on 23 March 1992 under file No. 19744/92;

Having regard to :

- reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 6 April 1994 and the observations in reply submitted by the applicant on 24 May 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish citizen, born in 1962 and living in Vienna. He is represented by Mr. Th. PRADER, a lawyer practising in Vienna.

The facts as uncontested between the parties are as follows. The applicant was held in detention on remand from 16 August 1990, 17.45 hrs, until 23 October 1990, 11.55 hrs, on suspicion of having tried to kill a compatriot by, together with others, shooting at him.

Eventually the proceedings against the applicant were discontinued on 22 October 1990 by the Public Prosecutor.

His request to be granted compensation for his alleged unjustified detention was rejected, in accordance with the Public Prosecutor's submissions, by the Review Chamber (Ratskammer) of the Vienna Regional Court (Landesgericht) on 9 October 1991.

The Court stated that according to the contents of the file a row broke out in front of a Turkish restaurant in Vienna on 5 August 1990 between the brothers K. on the one hand and on the other hand, one M.Y., who was shot down and seriously wounded by several bullets. According to expert investigations three different weapons had been used during the shooting which meant that three persons had fired at the victim. According to the statements made by the victim and the various witnesses there was suspicion that the brothers K. as well as the applicant and one C.A. had shot at M.Y. Both the applicant and C.A. were sympathisers of a political group to which the brothers K. also belonged and which was in bitter opposition to another political group of which M.Y. was the leader. According to witnesses and on their own admission the applicant and C.A. had been together with the brothers K. and M.Y. in the restaurant and had left it with the others shortly before the shooting began. Witness A.K. had stated that he saw the applicant and C.A. make movements as if they were reaching for a weapon after the first shots were fired. The victim had stated that he had been shot at from the pavement in front of the restaurant where according to witness evidence the applicant and C.A. had been seen standing. C.A. was eventually acquitted. The Regional Court concluded in view of these results of the investigation proceedings that there had been suspicion against the applicant of having participated in the plot of shooting and killing M.Y.

The applicant lodged an appeal (Beschwerde). He argued that contrary to the findings of the Regional Court, it was evident from the contents of the file that he had a claim to compensation. He maintained that there had been no plot between him and the brothers K. to kill M.Y.. In eventu, he requested to hear again all the people who had already been interrogated in the matter. In addition he requested that the files of a separate matter concerning one C.A. be likewise taken into account.

The applicant's appeal (Beschwerde) was rejected by the Vienna Court of Appeal on 13 November 1991. In addition to the findings of the Regional Court the Appellate Court pointed out that the victim M.Y. had also stated before the police that prior to the shooting the applicant and the brothers K. had been looking for him in the restaurant and the applicant had insinuated that something would happen to M.Y. The Court admitted that M.Y. had on 10 October 1990, when the shooting incident was reconstructed on the spot, declared not to have seen that the applicant was in possession of a weapon. Nevertheless the statements made on 10 October 1990 in connection with statements made earlier before the police as well as the investigations about the political background did not show that there was no reason any longer to suspect the applicant ("lassen... den Tatverdacht keinesfalls als entkräftet erscheinen") as he also could have participated even without having himself used a weapon, for example by securing one of the exits of the restaurant. Compensation could however have been granted in accordance with Section 2 para. 1 lit. b of the Compensation Act in Criminal Matters (StEG) only if reasons to suspect the applicant had completely ceased to exist. It did not suffice to offer a possible explanation that could invalidate the suspicion; rather it was virtually required that innocence was proven ("Demnach kann von einer Entkräftung des Tatverdachtes nicht ausgegangen werden. Die Grundvoraussetzung für die Zuerkennung einer Haftenschädigung nach dem § 2 Abs. 1 lit. b StEG ist jedoch die gänzliche Entkräftung des Tatverdachtes, wobei es nicht genügt, bloß eine mögliche Erklärung zu bieten, welche zur Entkräftung des Verdachtes dienen könnte, sondern als Voraussetzung geradezu die Unschuld erwiesen sein muß.").

COMPLAINTS

The applicant submits that in rejecting his request for compensation the courts disregarded evidence offered by him and that consequently his right to a fair hearing was violated. He invokes

Article 6 para. 1 and para. 3 (d) in this respect. Furthermore he alleges a violation of Article 6 para. 2 of the Convention in that his request for compensation was wrongly and arbitrarily denied. In particular he submits that the Austrian Courts wrongly applied the relevant provision of the Compensation Act in Criminal Matters by their finding that compensation could only be granted if the suspicion had completely ceased to exist. He furthermore considers that the statements in the decisions complained of according to which he had not shown that he had been wrongly suspected of having participated in the shooting incident constitutes in itself a violation of the principal of presumption of innocence. He points out that in criminal proceedings it is for the prosecution to prove the defendant's guilt and this should even more so be the case when criminal proceedings are discontinued because the person concerned has under such circumstances no possibility of proving his innocence.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 27 September 1990 and registered on 23 March 1992.

On 11 January 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 6 April 1994. The applicant replied on 24 May 1994.

On 17 May 1994 the Commission granted the applicant legal aid.

THE LAW

1. The applicant first complains under Article 6 (Art. 6) of the Convention that he was allegedly denied a fair hearing in the proceedings relating to his request for compensation because the domestic courts disregarded evidence offered by him.

The respondent Government deny the applicability of Article 6 (Art. 6) of the Convention. In addition they observe that a renewed questioning of all witnesses was superfluous as, contrary to the applicant's allegation, it was of no relevance whether there existed any pre-established plot to commit the murder. A silent mutual understanding between the offenders at the moment of the crime could be sufficient.

The Commission first observes that in a case which was referred to the European Court of Human Rights and is still pending, it considered that Article 6 (Art. 6) does apply to the proceedings in question (see Commission Report of 4 July 1994, Application No. 15346/89, A.M. and J.v.Z. v. the Netherlands).

The Commission notes that Article 6 (Art. 6) does not guarantee an unlimited and absolute right to obtain the examination of witnesses. The assessment of the relevance of available evidence and evidence offered by a party is in principle a matter for the domestic judge (Eur. Court H.R., Barbera, Messegué and Jabardo judgment of 6 December 1988, Series A no. 146, p. 31, para. 68).

In the present case, in the domestic proceedings for compensation, the applicant did not adduce fresh evidence in first instance but on appeal only requested that all those who had already been heard in the course of the criminal investigation relating to the attempted killing, be heard again. The appellate court found however, on the basis of the existing evidence, that at the relevant time there had been reason to suspect the applicant of being a participant in the murder plot and that the suspicion had not ceased to exist. The appellate court thus did not consider it to be justified to hear again

all persons involved in the matter. The Commission cannot find that in so proceeding the appellate court denied the applicant a fair hearing. There is consequently no appearance of a violation of Article 6 (Art. 6) of the Convention and this part of the applicant therefore has to be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

2. The applicant further complains under Article 6 para. 2 (Art. 6-2) of the Convention that his request for compensation was wrongly dismissed.

However, with regard to the judicial decision of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its constant case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236 ; No. 5258/71, Dec. 8.2.73, Collection 43 Pp. 71, 77 ; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

There is nothing to show that in the present case the domestic courts applied the relevant substantive law in an arbitrary manner.

The Commission concludes 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.

3. The applicant lastly complains under Article 6 para. 2 (Art. 6-2) of the Convention that, despite the discontinuation of the criminal proceedings against him, the Vienna Regional Court, in its decision of 9 October 1991, and the Vienna Court of Appeal, in its decision of 13 November 1991, rejected his compensation claim on the ground of a continuing suspicion against him.

The respondent Government consider that the decision in question does not contain any finding of guilt but only of continuing existence of reasons to suspect the applicant.

The applicant finds this unacceptable and argues that he has a right to be cleared of all suspicion and to obtain compensation for his detention on remand.

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 H.R., Minelli judgment of 25 March 1983, Series A no. 62, p. 18, para. 37; Lutz judgment of 25 August 1987, Series A no. 123, pp. 24-26, paras. 58-64; Sekanina judgment of 25 August 1993, Series A no. 266-A, pp. 13-16, paras. 24-30).

In the present case, the Austrian courts concerned dismissed the applicant's compensation claim on the ground that, though the investigations against him had been discontinued, a suspicion persisted. It cannot be found 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 principle of presumption of innocence invoked by him.

It follows that this part of the application is also 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.

Secretary to the First Chamber — President of the First Chamber

(M. F. BUQUICCHIO) — (C.L. ROZAKIS)