AS TO THE ADMISSIBILITY OF

Application No. 27629/95
by C. H.
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 8 March 1995 by C. H. against Austria and registered on 14 June 1995 under file No. 27629/95;

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 1972 and residing Vienna. He is a student. Before the Commission he is represented by Mr. G. Liedermann, 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 12 September 1992 police officers of the Vienna Federal Police Authority (Bundespolizeidirektion) arrested the applicant in the course of a demonstration on suspicion of having attempted to resist acts of public authority (versuchter Widerstand gegen die Staatsgewalt) and of having caused bodily harm to a police officer.

On 14 September 1992 the Investigating Judge, after having interrogated the applicant as suspect, ordered that he be taken into detention on remand on the ground of danger of collusion. On 17 September 1992 the applicant was released from detention on remand.

On 23 December 1992 the Vienna Public Prosecutor's Office filed a bill of indictment against he applicant charging him with attempting to resist an act of a public authority and causing aggravated bodily harm.

On 15 July 1993 and 7 October 1993 the trial against the applicant took place before the Vienna Regional Court (Landesgericht). On 7 October 1993 the applicant was acquitted of the charges against him. The Regional Court gave its decision in summary form (gekürzte Urteilsausfertigung).

On 21 October 1993 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 suspicion against him had been dissipated, and under Section 2 para. 1 (a) of the said Act, on the ground that his detention on remand had been unlawful.

On 11 February 1994 the Vienna Regional Court dismissed the applicant's claim for compensation under Section 2 para. 1 (b) of the Criminal Proceedings Compensation Act. It found that, notwithstanding the applicant's acquittal, the suspicion that he had committed criminal offences had not been dissipated. The Court noted that at the trial police officer R.F. had stated that he had been kicked by the applicant and police officer M.H. that he had seen police officer R.F. on the ground and the applicant kicking him. Police officer P.S. had stated that he had seen two police officers trying to arrest the applicant while the applicant had lashed out. Other witnesses heard by the court did not make any statements on the incident. Because of several contradictions between the statements of the police officers R.F. and M.H. as to the location and the specific conduct of the applicant, their statements were not sufficient to establish with the necessary degree of certainty the applicant's guilt. However, since their statements had been credible on the whole and police officer R.F.'s injuries had been proved, a suspicion against the applicant that he had committed the offences charged continued to exist. Thus, the condition for granting compensation under Section 2 para. 1 (b) of the Criminal Proceedings Compensation Act, namely that the suspicion against the person concerned had been dissipated, had not been met.

On 10 March 1994 the applicant appealed.

On 31 May 1994 the Vienna Court of Appeal (Oberlandesgericht), when dealing with the applicant's appeal, instructed the Regional Court to supplement its summary judgment of 7 October 1993. The Court of Appeal referred to the case-law of the European Court of Human Rights, according to which it was incompatible with the presumption of innocence under Article 6 para. 2 of the Convention to rely in a decision refusing compensation for detention on remand on a continuing state of suspicion against the person concerned, which was not supported by the reasons given in the judgment itself. Since the summary judgment did not contain any findings on the situation of evidence which had led to the acquittal, there was no sufficient factual basis for deciding on the applicant's appeal.

At an unspecified date the Regional Court supplemented its summary judgment of 7 October 1993. It stated that even if the evidence had not been sufficient to convict the applicant, the suspicion against him had not been dissipated. The continuing state of suspicion was based on the statements of two witnesses, police officers R.F. and M..H. who had stated in a convincing way that the applicant had attacked R.F. in the course of his arrest. Furthermore, R.F. had suffered injuries which corresponded to the version of events given by him. The statements of the other witnesses heard by the Court neither confirmed nor dissipated the suspicion against the applicant.

On 30 August 1994 the Vienna Court of Appeal dismissed the applicant's appeal of 10 March 1994. The Court of Appeal found that in its decision refusing compensation for detention on remand the Regional Court had sufficiently explained why the suspicion against the applicant had not been dissipated. The applicant's argument that an

acquittal as such dissipated all remaining suspicion could not be followed. In its judgment in the Sekanina case the European Court of Human Rights had only found that it was an infringement of the presumption of innocence if a court in a decision on compensation of detention on remand adduced arguments against a dissipation of suspicion which had not been contained in a previous judgment acquitting the person concerned. In the present case, however, the Regional Court had relied on arguments already contained in the acquitting judgment.

On the same day, in a separate decision, the Court of Appeal dismissed the applicant's compensation claim under Section 2 para. 1 (a) of the Criminal Procedure Compensation Act. The Court found that the lawfulness of the applicant's detention on remand had to be assessed in the light of the situation at the time of his detention. At that time a serious suspicion against the applicant and the risk of collusion existed. When the risk of collusion had ceased to exist the applicant had been released immediately.

The applicant did not appeal against the Court of Appeal's decision refusing his compensation claim under Section 2 para. 1 (a) of the Criminal Procedure Compensation Act.

B. Relevant domestic law

1. Detention on remand

Under S. 180 paras. 1 and 2 of the Code of Criminal Procedure (Strafprozeßordnung), a person may be held in detention on remand - where there are serious grounds for suspecting him of having committed a criminal offence - if there is a risk of his absconding, of collusion or of committing further offences.

2. Compensation regarding pecuniary damages resulting from detention on remand

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 5 para. 1 (c) of the Convention that his detention on remand had been unlawful because there had been no serious suspicion against him of having committed criminal offences. He submits that the Court of Appeal should not have found that there had existed a serious suspicion against him at the time of his detention on remand, as the existence of such a suspicion justifying detention on remand had to be assessed in the light of his subsequent acquittal by the Regional Court.

The applicant further complains under Article 6 para. 2 of the Convention that the Austrian courts disregarded the presumption of innocence when refusing his claim for compensation under Section 2 para. 1 (b) of the Criminal Proceedings Compensation Act, in that, despite his acquittal by the Regional Court, they found that a suspicion against him continued to exist.

THE LAW

1. The applicant complains under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention that his detention on remand had been unlawful.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 5 para. 1 (Art. 5-1) of the Convention, as under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules international law.

The Commission observes that two distinct proceedings on the applicant's claim for compensation for detention on remand took place. The first set of proceedings concerned the applicant's claim for compensation on the ground that he had been acquitted (Section 2 para. 1 (b) of the Criminal Proceedings compensation Act). The second set of proceedings concerned his claim for compensation on the ground that his detention was allegedly unlawful (Section 2 para. 1 (a) of the Criminal Proceedings Compensation Act). With regard to the latter set of proceedings the Commission recalls that such proceedings, as their subject matter is the examination of the lawfulness of detention on remand suffered by a person, may constitute an effective domestic remedy to be exhausted for the purpose of Article 26 (Art. 26) of the Convention by a person complaining about an alleged breach of Article 5 (Art. 5) of the Convention (No. 7950/77, Dec. 4.3.80, D.R. 19 p. 213).

In the proceedings under Section 2 para. 1 (a) of the Criminal Proceedings Compensation Act the applicant, however, failed to lodge an appeal with the Supreme Court against the Court of Appeal's decision of 30 August 1994.

It follows that the applicant has not satisfied the requirements as to the exhaustion of domestic remedies under Article 26 (Art. 26) of the Convention and that this part of the application, therefore, is inadmissible by virtue of Article 27 para. 3 (Art. 27-3) of the Convention.

2. 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 his claim for compensation, in that, despite his acquittal by the Regional Court, they found that a suspicion against him continued to exist.

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 considers it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of this complaint to the respondent Government.

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint that the Austrian courts disregarded the presumption of innocence when refusing his claim for compensation, in that they found that a suspicion against him continued to exist after his acquittal;

DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber