AS TO THE ADMISSIBILITY OF

Application No. 17798/91
by Olga Renate DEIXLER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 31 August 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

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 15 August 1990 by Olga Renate DEIXLER against Austria and registered on 13 February 1991 under file No. 17798/91;

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 in an Austrian citizen, born in 1945 and residing in Freistadt (Austria).

The applicant and her husband have lodged a previous application (N° 9231/80) against Italy and Austria in which they complained of their detention in Italy in view of their extradition to Austria and of the extradition proceedings concerned as well as of the conduct of criminal proceedings instituted against them by the Austrian authorities.

On 11 March 1983 the Commission declared this application inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

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

In 1977 inquiries were started against the applicant and her husband on the suspicion of having committed inter alia aggravated fraud and fraudulent conversion between 1971 and 1979 in relation to the activities of several companies belonging to the applicant's husband and dealing with real estate transactions.

By a decision of 4 September 1979 the Bar Committee (Ausschuss der Rechtsanwaltskammer) for Vienna, Lower Austria and Burgenland

suspended the applicant from practice as a barrister until the final outcome of the criminal proceedings.

On 24 September 1980 and 10 October 1980 the Vienna Regional Court (Landesgericht) issued two warrants of arrest against the applicant and her husband on charges of aggravated fraud, fraudulent conversion, contravention of the Social Security Act and forgery committed between 1971 and 1979.

On 17 September 1980 the applicant and her husband were arrested in Frascati (Italy).

On 20 November 1981 the applicant was extradited to Austria where she was remanded in custody.

On 24 May 1982 the Vienna Court of Appeal (Oberlandesgericht) decided that the applicant's detention on remand should not exceed nine months. On the Vienna Public Prosecutor's appeal the Vienna Court of Appeal decided that the applicant would be granted a conditional release subject to the payment of 2 million Schillings.

On 9 July 1982 the Vienna Public Prosecutor issued an indictment against the applicant. This was served on her by the prison authorities on 22 July 1982.

On 29 November 1983 the applicant was released from detention on remand.

On 5 September 1985 the Vienna Regional Court informed the applicant that part of the criminal proceedings instituted against her had been discontinued on 28 March 1985.

By a judgment of 15 April 1986 the Vienna Regional Court convicted the applicant of a breach of the Austrian Social Security Act (Allgemeines Sozialversicherungsgesetz - ASVG) and imposed a pecuniary fine on her. The applicant was found guilty of having failed to pay during the period from January to May 1979 to the Vienna Social Security Authorities (Gebietskrankenkasse) contributions in an amount of 9.242,20 Schillings for the staff employed in her law firm.

The applicant lodged a plea of nullity against this judgment.

On 3 November 1987 the Supreme Court (Oberster Gerichtshof) quashed the judgment and referred the case back to the first instance court for an examination of the question as to whether or not the Social Insurance Authorities' requests for contribution payments had been served on the applicant.

The Vienna Regional Court then discontinued these proceedings.

By a judgement of 28 September 1989, the Vienna Regional Court acquitted the applicant of the remainder of the charges brought against her.

The Public Prosecutor lodged a plea of nullity against this judgment which he later withdrew.

On 6 April 1990 the Vienna Regional Court informed the applicant that the judgment of 28 September 1989 had become final on 20 March 1990. At the applicant's request it was notified to her on 27 July 1990.

Meanwhile, by a decision of the Bar Committee (Ausschuss der Rechtsanwaltskammer) for Vienna, Lower Austria and Burgenland of 30 April 1985 the applicant had been struck off the roll following a final decision of 26 February 1985 by which the Vienna Commercial Court (Handelsgericht) had dismissed a request to open bankruptcy proceedings

(Konkurs) against the applicant on the ground that her assets were insufficient to cover the costs of such proceedings. This request was brought by a former employee in the applicant's law firm. Her claim was finally settled by an Insolvency Fund.

On 28 May 1985 the Bar Committee declared the applicant's appeal (Vorstellung) against the decision to strike her off the roll inadmissible.

The Bar Committee and the applicant referred the case for decision to the Disciplinary Appeals Board (Oberste Berufungs- und Disziplinarkommission für Rechtsanwälte und Rechtsanwaltsanwärter).

On 8 July 1985 the Disciplinary Appeals Board declared the appeal inadmissible on account of a lack of jurisdiction.

On 24 September 1990 the Constitutional Court (Verfassungs-gerichtshof) dismissed a constitutional appeal lodged by the applicant considering that the decision by which the applicant was struck off the roll was not contrary to any of the rights guaranteed by the Federal Constitution.

The Constitutional Court pointed out that, in accordance with Section 34 para. 1 (a) of the Barristers' Act, the right to exercise the profession of barrister should be revoked with the binding opening of bankruptcy proceedings until their binding termination (Die Berechtigung zur Ausübung der Rechtsanwaltschaft erlischt: ... durch die rechtskräftige Eröffnung des Konkurses bis zu seiner rechtskräftigen Aufhebung). The Constitutional Court recalled that a request to open bankruptcy proceedings had been rejected for lack of sufficient means to cover the costs of the bankruptcy proceedings. Section 28 para.1 of the Barristers' Act (Rechtsanwaltsordnung) enumerated the functions exercised by the Bar Committee. Section 28 para. 2 of the Barristers' Act further provided that the Bar Committee exercised also those functions which were not expressly referred by law to any other body. The striking off the roll was not assigned to any specified organ. In accordance with Section 28 para. 2 of the Barristers' Act, the Bar Committee was therefore entrusted with this task. No appeal lay in this matter. Decisions could be appealed against solely in cases expressly provided for by law.

The Constitutional Court concluded that the legal provisions had been correctly applied when rejecting the applicant's appeal and that her right to a fair hearing had thus not been violated. Referring to its previous case-law, the Constitutional Court recalled that these legal provisions were in accordance with the Constitution and that it was therefore excluded that any other constitutional rights of the applicant had been breached.

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that the decision of the Bar Committee of 30 April 1985 to strike her off the roll was not taken by a tribunal established by law with full jurisdiction on questions of law and fact. The decision had not been pronounced publicly and there lay no appeal against this decision.

2. The applicant next complains under Article 1 of Protocol No. 1 to the Convention that as a result of her being disbarred following the decision of the Bar Committee of 30 April 1985 she is prevented from practising as a barrister and deprived of her right to earn money.

3. The applicant complains also of the length of the criminal proceedings amounting to ten years. The facts were clear. The relevant documents had been at the disposal of the judicial authorities. According to her, the judicial authorities alone are responsible for the length of the proceedings. She also appears to complain about the

alleged unfairness of the proceedings.

She invokes Article 6 paras. 1, 2 and 3 (a) of the Convention.

4. The applicant finally complains that she was kept illegally in detention on remand from 20 November 1981 to 29 November 1983 by virtue of two invalid warrants of arrest issued by the Vienna Regional Court against her.

She invokes para. 1 (b) and (c) and paras 2, 3, 4 and 5 of Article 5.

THE LAW

1. The applicant complains that the question of her being struck off the roll was not determined by an impartial and independent tribunal established by law as required by Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention, as far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal established by law."

The Commission considers that 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.

2. The applicant also complains that the decision of the Bar Committee to strike her off the roll constitutes an unjustified interference with her right to the peaceful enjoyment of her possessions, contrary to Article 1 of Protocol No. 1 (P1-1) to the Convention in the sense that she was prevented from practising as a barrister and being deprived of her right to enjoy the fruits of her own labour.

Article 1 of Protocol No. 1 (P1-1) reads as follows:

> "(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> (2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other penalties."

Assuming that there has been an interference with the applicant's rights as guaranteed by this article, the Commission finds that such interference has not failed to strike a fair balance between the public interests and the applicant's private interests.

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.

3. a) The applicant further complains that the criminal proceedings instituted against her in 1979 were not concluded within a reasonable time as required by Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission considers that 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 also notice of this complaint to the respondent Government.

b) As far as the applicant seems to complain under Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention that the criminal proceedings against her were unfair, the Commission recalls that any procedural defects which may have existed at the time of an accused's trial must be considered to have been rectified by the accused's subsequent acquittal (see No. 5575/72, Dec. 8.7.74, D.R. 1 p. 45; No. 8083/77, Dec. 13.3.80, D.R. 19 pp. 223 and 226; No. 15831/89, Dec. 25.2.91, D.R. 69 p. 317).

The Commission notes that the proceedings instituted against the applicant have been discontinued and that on 28 September 1989 the Vienna Regional Court acquitted the applicant of the remaining charges brought against her. It follows that the applicant cannot now claim to be a "victim" of a violation of the Convention as required by Article 25 (Art. 25) since she has regained redress for her complaints in this respect.

This part of the application, therefore, is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant finally complains under Article 5 (Art. 5) of the Convention that her detention on remand from 20 November 1981 to 29 November 1983 was 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 (Art. 5) 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 recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

In this respect the Commission observes that the applicant has not shown that she appealed to the Judges' Chamber or that she had instituted proceedings for unlawful detention. It follows that the applicant has not complied with the requirement as to the exhaustion of domestic remedies contained in Article 26 (Art. 26) of the Convention.

In any event, even assuming that the applicant did exhaust domestic remedies, the Commission finds that the applicant failed to comply with the time limit stipulated by Article 26 (Art. 26) of the Convention as she was released from detention on remand on 29 November 1983 but introduced the present application only on 15 August 1990.

This part of the application must, therefore, be rejected in accordance Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN its examination of the complaint under Article 6 para. 1 of the Convention as regards the proceedings concerning the applicant's disbarment and under the same provision as regards the length of the criminal proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber President of the First Chamber

(M.F. BUQUICCHIO) (A. WEITZEL)