AS TO THE ADMISSIBILITY OF

Application No. 23672/94
by Dragan DUMANCIC
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 12 November 1993 by Dragan DUMANCIC against Austria and registered on 14 March 1994 under file No. 23672/94;

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 1962, was a citizen of former Yugoslavia and is residing in Vienna. In the proceedings before the Commission he is represented by Mr. K. Bernhauser, a lawyer practising in Vienna.

On 27 July 1991 the applicant, upon an arrest warrant of the Vienna Regional Criminal Court (Landesgericht für Strafsachen), was taken in detention on remand at the Hirtenberg prison, which is situated outside Vienna.

On 5 December 1991 the Vienna Regional Court acquitted the applicant and ordered the officers of the prison authorities (Justiz-wachebeamte) at 10.45 a.m. that he be released. Subsequently, the applicant was held in the guard-room of the Regional Court's prison until the trials of two other prisoners had ended. At 12.15 p.m. a transport with the applicant and these two prisoners left the Regional Court and arrived at the Hirtenberg prison at 1.30 p.m. After having collected his personal belongings, the applicant came to the so called reception room at 2.10 p.m. Subsequently, the payment of some administrative fines was settled and he was released at 2.45 p.m.

On 9 January 1992 the applicant lodged a complaint (Beschwerde) with the Vienna Independent Administrative Tribunal (Unabhängiger Verwaltungssenat). He submitted in particular that his detention on 5 December 1991 between 10.45 a.m., when the Court ordered his release, and 2.45 p.m., when he was actually released, was unlawful and violated his right to liberty. In these and the subsequent proceedings the applicant was represented by counsel.

On 14 September 1992 the Vienna Independent Administrative Tribunal rejected the applicant's complaint as regards his detention on 5 December 1991 between 10.45 a.m. and 2.10 p.m, but declared that his further detention between 2.10 and 2.45 p.m. had been unlawful.

As regards the period between 10.45 a.m. and 2.10. p.m., the Independent Administrative Tribunal found that a court order to release a prisoner on remand did not mean that he had to be released on the spot, but that the necessary steps for his release had to be taken without delay. During this short transitional period, the court order served as a legal basis for the detention. The Hirtenberg prison, where the applicant had been held in detention on remand, was between forty-five minutes' and two and a half hours' drive from the Vienna Regional Court, depending on the weather and traffic conditions. In these circumstances, it was justified to organise "collective transports" of a number of prisoners, if this could be done within reasonable time. The waiting time before the departure from the Regional Court at 12.15 p.m. was not yet unreasonable. However, advance notice of the applicant's acquittal should have been given to the prison authorities and the release formalities should have been concluded after he had collected his personal belongings at 2.10 p.m. Until this time his detention was still covered by the Regional Court's order.

As regards the period between 2.10 and 2.45 p.m., the Independent Administrative Tribunal found that the applicant's detention served in particular to settle the payment of some administrative fines. However, it was no more covered by the Regional Court's order and there was no other legal basis for it. Thus, this part of the applicant's detention was unlawful.

On 28 October 1992 the applicant lodged a complaint with the Administrative Court (Verwaltungsgerichtshof). He contested the opinion of the Independent Administrative Tribunal that the delay between 10.45 a.m. and 2.10 p.m. was still reasonable. He submitted in particular that the prison authorities would have been obliged to carry out the release formalities at the prison of the Vienna Regional Criminal Court or to transfer him immediately to the Hirtenberg prison without waiting for other prisoners.

On 16 September 1993 the Administrative Court dismissed the applicant's complaint. It found that the Independent Administrative Tribunal had rightly assumed that the release formalities had to be carried out at the prison where the applicant had been held in detention on remand. Further, the Court confirmed that a delay of one hour and a half in order to organise a "collective transport" of several prisoners was justified with a view to the duration of the drive. Thus, the court's release order had not been exceeded.

COMPLAINTS

The applicant complains under Article 5 of the Convention that his detention until 2.10 p.m. on 5 December 1991, following the Regional Court's order of 10.45 a.m. to release him, was unlawful. He submits that this detention was not justified, as the prison authorities would have been obliged to carry out the release formalities at the prison of the Vienna Regional Criminal Court or to transfer him immediately to the Hirtenberg prison.

THE LAW

The applicant complains under Article 5 (Art. 5) that his detention on 5 December 1991, following the Regional Court's order to release him, was unlawful.

Article 5 (Art. 5), so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> ...
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed and offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

The Commission recalls that, as regards the question whether a detention is "lawful", including whether it complies with "a procedure prescribed by law", the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. However, it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 (Art. 5), namely to protect individuals from arbitrariness (see Eur. Court H.R., Wassink judgment of 27 September 1990, Series A no. 185-A, p. 11, para. 24). As regards the execution of a decision ordering the release of a detainee, the Court has acknowledged that some delay is understandable (see Eur. Court H.R. Quinn judgment of 22 March 1995, para. 42, Series A no. 311).

In the present case, the Vienna Regional Criminal Court on 5 December 1991 at 10.45 a.m. ordered the applicant's release. However, the execution of the release order took until 2.45 p.m. Part of this period, namely the time as of 2.10 p.m. was, in course of domestic appeal proceedings, found to be unlawful. The question before the Commission is, therefore, whether the applicant's detention during the remaining period between 10.45 a.m. and 2.10 p.m. can still be regarded as a lawful execution of the Regional Court's above-mentioned order. The applicant complains in particular that the authorities would have been obliged to carry out the release formalities at the prison of the Vienna Regional Criminal Court or to transfer him immediately to the Hirtenberg prison.

The Vienna Independent Administrative Tribunal found that a court order to release a prisoner on remand still served as a legal basis for the short transitional period until his actual release, provided that the necessary steps were taken without delay. Further, the Administrative Court held that, in the applicant's case, it was correct to carry out the release formalities at the Hirtenberg prison, where he had been detained. With a view to the distance between the Regional Court and the Hirtenberg prison, it was justified to organise a "collective transport" of several prisoners, which in the applicant's case caused a waiting period of one and a half hours between 10.45 a.m. and 12.15 p.m. Finally, the Commission notes that the remaining time was needed for the transfer itself, which took until 1.30 p.m. and the release formalities, which took until 2.10 p.m. In these circumstances, the applicant's detention until 2.10 p.m., following the Regional Court's order to release him, was lawful within the meaning of Article 5 para. 1 (Art. 5-1) of the Convention. There is no indication of arbitrariness in the conduct of the authorities.

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 by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber	President of the First Chamber
(M.F. BUQUICCHIO)	(C.L. ROZAKIS)