AS TO THE ADMISSIBILITY OF

Application No. 20063/92
by H. B.
against Austria

The European Commission of Human Rights 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 8 May 1992 by H. B. against Austria and registered on 1 June 1992 under file No. 20063/92;

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 is an Austrian citizen, born in 1955. He is a medical doctor by profession and resides at Wölfnitz, Austria. Before the Commission he is represented by Dr. Ernst Maiditsch, a lawyer practising at Klagenfurt.

On 21 May 1989 the applicant was called to the site of a car accident in which a person had been seriously injured. The applicant immediately commenced certain emergency treatment, inter alia inserting a tube through which artificial respiration could be administered. The patient was thereafter taken by helicopter to the nearest hospital. During the flight, however, the patient suffered a cardiac arrest and eventually died.

Following the investigations into the above incident the applicant was, by indictment of 11 October 1989, charged with having negligently caused the death of the above patient in that he had negligently placed the respiration tube in the gullet instead of the windpipe, causing a brain oedema and subsequently the death of the patient.

The case was examined by the Regional Court (Landesgericht) of Klagenfurt. Court sessions were held on 4 December 1989, 2 May, 19 July

and 12 December 1990 during which the Court obtained the evidence from two court appointed experts, an expert witness as well as a number of other witnesses. Furthermore, the Court had at its disposal the expert opinion submitted by the court appointed experts as well as other written material, inter alia the autopsy report and the results of a brain scan. During the proceedings the applicant submitted a number of requests for additional evidence (Beweisanträge) the majority of which were rejected by the Court. In particular, the Court rejected a request to obtain a second expert opinion, to hear another expert witness, to obtain certain documents and to reconstruct the circumstances surrounding the patient's removal from the helicopter upon arrival at the hospital. The Court found that this evidence would not, having regard to the evidence already available, add anything of relevance to the case.

On the basis of the evaluation of the evidence submitted the Regional Court, by judgment of 12 December 1990, found the applicant guilty of the charge brought against him and sentenced him to pay a fine totalling 40,000 Austrian Schillings. The payment of half of the fine was suspended.

The applicant, as well as the prosecutor, appealed against the judgment to the Graz Court of Appeal (Oberlandesgericht). The prosecutor requested a higher fine whereas the applicant, in support of his request for acquittal, relied on the fact that the first instance court had refused his requests for further evidence. In this respect the appeal was based on the Regional Court's refusal to obtain a further expert opinion, to hear a further expert witness, to obtain certain written evidence and to reconstruct the removal of the patient from the helicopter.

The case was heard in the Court of Appeal on 8 November 1991. In reply to the applicant's above complaints the Court stated that another expert opinion would be superfluous having regard to the expert opinion already available, the autopsy report and the results from the brain scan. The Court furthermore found the reconstruction request not only superfluous but also inadmissible (unzulässig) in the circumstances of the case. Finally, the Court found the remaining requests for supporting evidence to concern matters which already followed from the other evidence submitted. In the light of this the Court concluded that the applicant had not suffered any injustice in his procedural rights and that the first instance court had correctly concluded that all relevant questions had been sufficiently clarified by the available evidence.

By judgment of 8 November 1991 the Court accordingly rejected the applicant's appeal as unsubstantiated (unbegründet). As requested by the prosecutor the Court increased the fine to 100,000 Austrian Schillings, the payment of which was suspended.

COMPLAINTS

The applicant complains that he did not have a fair trial. He maintains in particular that he was not presumed innocent until proved guilty according to law and, furthermore, complains of the fact that the courts rejected his request for supplementary evidence. He invokes Article 6 paras. 1, 2 and 3 (d) of the Convention.

THE LAW

The applicant complains that he did not have a fair trial, that he was not presumed innocent and that the courts rejected his requests for supplementary evidence. He invokes Article 6 paras. 1, 2 and 3 (d) (Art. 6-1, 6-2, 6-3-d) of the Convention which reads as far as relevant:

"In the determination of ... any criminal charge against him,

everyone is entitled to a fair ... hearing ... by an ... impartial ... tribunal ...

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Everyone charged with a criminal offence has the following minimum rights:

...

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

The Commission first recalls that with regard to the judicial decisions involved in the present case, its only task is to ensure, in accordance with Article 19 (Art. 19) of the Convention, the observance of the obligations undertaken by the Parties in the Convention. In particular, the Commission 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. It refers, on this point, to its established case-law, (see, e.g. No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

It is true that in this case the applicant also complains that he did not have a fair trial, that he was not presumed innocent and that the courts rejected his requests for supplementary evidence.

a. In respect of the complaint that the applicant was not presumed innocent until proved guilty according to law the Commission recalls that the national courts examined the statements of several experts and witnesses as well as numerous documents and is of the opinion that the judgment was based on an evaluation of these statements and documents. Especially, there is nothing indicating that the courts in fulfilling their functions started from the conviction or assumption that the applicant had committed the acts of which he was charged. An examination of this complaint therefore fails to disclose any appearance of a violation of Article 6 para. 2 (Art. 6-2) of the Convention.

b. As regards the remaining complaints submitted under Article 6 (Art. 6) of the Convention the Commission notes that as the guarantees in para. 3 of Article 6 (Art. 6-3) are specific aspects of the right to a fair trial set forth in para. 1, it will consider the applicant's complaints under the two provisions taken together.

In this connection the Commission refers to its consistently held view that the conformity of a trial with the rules laid down in Article 6 (Art. 6) of the Convention should be examined in the light of the entire trial. It is true that one particular aspect or incident could have been influential or assumed such importance as to constitute a decisive factor in a general appraisal of the trial as a whole. But it is important to note in this regard that, even in such an event, it is on the basis of an appraisal of the whole trial that the question of whether the case was given a fair hearing should be decided (cf. for example No. 9000/80, Dec. 11.3.82, D.R. 28 p. 127).

As regards the hearing of witnesses the Commission recalls that one of the purposes of Article 6 para. 3 (d) (Art. 6-3-d) is to ensure equality between the defence and the prosecution as regards the summoning and examination of witnesses but it does not grant the accused an unlimited right to secure the appearance of witnesses in court. Furthermore, it is in the trial court's discretion to refuse to take evidence which is considered irrelevant or unobtainable (cf. No. 8417/78, Dec. 4.5.79, D.R. 16 p. 200 and Eur. Court H.R., Engel and Others judgment of 8 June 1976, Series A no. 22, para. 91, pp. 38-39).

In the present case the Commission recalls that the applicant's case was heard in public in the Regional Court where he was present and assisted by counsel. The Court heard a number of witnesses and two experts whereas it rejected the requests to obtain supplementary evidence since this evidence would not, in the Court's view, be necessary for the evaluation of the substance of the case which it had to consider. Furthermore, the Commission recalls that the case was heard again in public in the Court of Appeal which confirmed the refusal to obtain supplementary evidence.

The Commission has found no elements which would indicate that the courts went beyond their discretion to refuse to take evidence in the circumstances of the present case. Furthermore, the Commission has not found other elements which could lead it to conclude that the right to a fair trial within the meaning of Article 6 (Art. 6) of the Convention was not respected. Accordingly, an examination of the case, as submitted, does not disclose to the Commission, on the basis of an appraisal of the entire trial, any appearance of a violation of Article 6 (Art. 6) of the Convention.

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) — (A. WEITZEL)