AS TO THE ADMISSIBILITY OF

Application No. 16588/90
by H.H.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 2 September 1992, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First 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 18 July 1989 by H.H. against Austria and registered on 14 May 1990 under file No. 16588/90;

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, a Yugoslav citizen born in 1950, is a labourer residing at Kladanj in Yugoslavia. Before the Commission he is represented by Mr. R. Weiss, a lawyer practising at Spittal a.d. Drau in Austria.

On 11 April 1983 the applicant, who apparently cannot speak German, was arrested on suspicion of having contravened the Passport and Registration Act (Pass- und Meldegesetz) and brought before the Aliens' Police at Spittal. There, the official L. ordered him to be brought before the Spittal District Office (Bezirkshauptmannschaft) where on the same day he was convicted of the contravention mentioned and sentenced to 600 AS or, alternatively, to two days' imprisonment. As the applicant could not pay, L. ordered his imprisonment and his subsequent expulsion. After serving this sentence, the applicant was detained as from 13 April 1983 awaiting expulsion. Investigations were then undertaken as to who would pay the costs of his imprisonment. On 23 June 1983 the applicant was without any further explanation released and expelled to Yugoslavia.

On 5 September 1985 the Klagenfurt Regional Court (Landesgericht) convicted the official L. of the offence of negligently withdrawing the applicant's freedom and conditionally sentenced him to three weeks' imprisonment.

In 1987 the applicant applied to the Austrian authorities for damages for the detention suffered from 13 April to 23 June 1983. In 1989 he introduced an official compensation action against the state (Amtshaftungsklage) in which he claimed 180,000 AS damages. The applicant stated that he had been in Yugoslavia when the proceedings had been instituted against L.

On 11 September 1989 the Klagenfurt Regional Court rejected the official compensation action as it had not been introduced within the statutory requirement of three years after the damage, namely the detention, had occurred. The applicant, who had been imprisoned, had been aware of the damage. The applicant was also refused legal aid as the action was manifestly without prospects of success. Finally, the applicant was ordered to reimburse the costs of the Austrian Republic, amounting to 10,980 AS, and of the official L., who intervened in the proceedings, amounting to 6,588 AS. The applicant's appeal against this decision, in which he requested in particular legal aid, was dismissed by the Graz Court of Appeal (Oberlandesgericht) on 9 November 1989 which found that the action had been lodged out of time.

Meanwhile, in 1988, the applicant attempted to join the newly reopened criminal proceedings against the official L. as a private party concerning his civil law claim for compensation (Privatbeteiligter). This request was declared inadmissible by the Spittal District Court (Bezirksgericht) on 19 September 1988.

On appeal lodged by the applicant the decision on non-admission as a private party was quashed by the Klagenfurt Regional Court. In its decision the court pointed out that since the criminal proceedings instituted against L. had come to an end its decision could have no direct consequences. The Court also pointed out that, in any event, in the present case the proper remedy would have been the official compensation action.

COMPLAINTS

1. The applicant complains that he has not been granted compensation for his illegal detention. He claims that he never received a punishment order or an expulsion order. While in Yugoslavia he wrote to the Austrian authorities within the time-limit of three years, though he never received a reply. The applicant relies on Article 5 para. 5 of the Convention.

2. Under Article 6 para. 1 of the Convention the applicant complains that the proceedings concerning the compensation action were not fair. Thus, he was refused legal aid and he was not permitted to join the criminal proceedings against L. as a private party.

THE LAW

1. The applicant complains under Article 5 para. 5 (Art. 5-5) that he was not granted compensation for his illegal detention.

The Commission notes that on 11 September 1989 the Klagenfurt Regional Court and on 9 November 1989 the Graz Court of Appeal rejected the applicant's claims as being out of time. However, according to the Commission's case-law, domestic remedies have not been exhausted within the meaning of Article 26 (Art. 26) of the Convention where a domestic remedy is not admitted because of a procedural mistake (see No. 6878/75, Dec. 6.10.79, D.R. 6 p. 79). It follows that the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also complains under Article 6 para. 1 (Art. 6-1) of the Convention that the various proceedings were unfair, inter alia as he was refused legal aid and could not participate in the proceedings against L. as

a private party. The applicant may also be understood as complaining that the decisions of the Austrian courts to declare his compensation action as being out of time in fact, contrary to Article 6 para. 1 (Art. 6-1), barred him the access to a court.

Insofar as the applicant complains that the Regional Court and the Court of Appeal refused to grant him legal aid, the Commission considers that the refusal to grant legal aid for civil proceedings which have no prospect of success does not constitute a denial of access to a court, provided this refusal is not arbitrary (No. 8158/78, Dec. 10.7.80, D.R. 21, p. 101). In the present case the Regional Court and the Court of Appeal refused to grant the applicant legal aid as his claim had become statute-barred and thus lacked any prospect of success. Under the circumstances the Commission considers that the courts' decisions could not be described as arbitrary.

Insofar as the applicant may be understood to be complaining about the decision of the Austrian courts to declare his claim for compensation as being out of time and thus preventing him from having access to a court, the Commission recalls that Article 6 (Art. 6) of the Convention does not debar Contracting States from making regulations in the interest of the good administration of justice concerning the access to courts (No. 6916/75, Dec. 8.10.70, D.R. 6, p. 107). In the present case the Commission considers that it does not render the proceedings unfair if the courts decided not to deal with the applicant's action as they considered his claim to be statute-barred.

Insofar as the applicant complains that he could not participate as a private party in the proceedings against the official L., and even assuming that an issue arises here under the Convention, the Commission notes that the decision of the Spittal District Court of 19 September 1988, quashed by the Klagenfurt Regional Court did not affect the applicant's alleged claim for compensation against L. If the applicant would have had an arguable claim against L., he could without obstacles have instituted a civil law suit for compensation against L.

Accordingly these complaints do not disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention. This part of the application must therefore be rejected as being 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. de SALVIA) (J.A. FROWEIN)