AS TO THE ADMISSIBILITY OF

Application No. 23398/94
by Tony ISSA-CHURCHILL
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 January 1994 by Tony ISSA-CHURCHILL against Austria and registered on 4 February 1994 under file No. 23398/94;

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 1941, is an Austrian national residing in the United States of America. In the proceedings before the Commission he is represented by Mr. H. Rabitsch, a lawyer practising in Vienna.

On 9 July 1986 the Vienna Regional Criminal Court (Landesgericht für Strafsachen), in the course of preliminary investigations against the applicant, issued a warrant for arrest of a fugitive (Steckbrief). The Regional Court found that the applicant was under strong suspicion of having committed misappropriation (Veruntreuung). He had allegedly taken several works of art on commission but had, after selling them, not transferred the due price to the seller.

On 14 February 1989 the applicant was arrested in Paris upon the request of the Austrian authorities.

On 16 February 1989 the Vienna Regional Criminal Court issued a warrant of arrest (Haftbefehl) against the applicant on the strong suspicion of having committed misappropriation. It found that he had gone abroad and had apparently tried to evade the criminal proceedings

pending against him. Thus, there was also a danger of his absconding. Subsequently, the Austrian authorities filed a request to extradite the applicant.

On 30 March 1989 the applicant was released on bail from detention with a view to his extradition.

On 21 June 1989 the Paris Court of Appeal (cour d'appel) dismissed the Austrian authorities' request to extradite the applicant. The Court referred in particular to several documents presented by the defence and relating to the contracts between the applicant and the sellers of the works of art at issue. It found that the applicant did not have a sales order within the meaning of the relevant provision of the French Criminal Code, as it did not appear that he was obliged to sell the works of art at a fixed price or a minimum price. Thus, the charges against him constituted a dispute of a merely civil or commercial nature. In these and the subsequent proceedings the applicant was represented by counsel.

On 15 February 1993 the investigating judge at the Vienna Regional Criminal Court dismissed the applicant's request of 8 January 1993 to set aside the warrant for arrest of a fugitive of 1986 and the arrest warrant of 1989. The investigating judge noted that such warrants of arrest had to be set aside, if the reasons for issuing them were no longer valid. However, a strong suspicion of having committed misappropriation still subsisted against the applicant. Moreover, his whereabouts were unknown since his release from detention on 30 March 1989. Thus, there was still a danger of his absconding. Finally, the applicant was an Austrian national and the offence, of which he was suspected, had been committed in Austria. Therefore Austrian law applied exclusively as regards the assessment of the offence as well as regards the question of issuing or setting aside an arrest warrant.

On 1 June 1993 the Vienna Court of Appeal (Oberlandesgericht) dismissed the applicant's appeal (Beschwerde). It noted that the applicant had referred to the decision of the Paris Court of Appeal and thereby relied on S. 65 of the Austrian Criminal Code (Strafgesetz-buch), which provides that offences committed abroad can only be tried in Austria, if they are also punishable under the law of the State where they were committed. However, as the offence at issue had been committed in Austria, Austrian jurisdiction applied in accordance with S. 62 of the Criminal Code. There were no reasons to quash the warrant for arrest of a fugitive and the arrest warrant.

On 21 July 1993 the Supreme Court (Oberster Gerichtshof) rejected the applicant's complaint under the Fundamental Rights Complaints Act (Grundrechtsbeschwerde-Gesetz) as being inadmissible. It noted that the applicant had requested it to render a declaratory decision that the refusal by the Vienna Court of Appeal to set aside the warrants of arrest against him violated his right to liberty. However, the Fundamental Rights Complaints Act only applied where a court decision had caused the applicant's arrest or detention. The contested decision had been taken after his release from detention with a view to his extradition and did, therefore, not meet this requirement.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the Austrian courts' refused to set aside the warrant for arrest of a fugitive and the arrest warrant against him. He submits in particular that the decision by the Paris Court of Appeal should be binding for the Austrian courts.

THE LAW

The applicant complains that the decisions of the Austrian courts

refusing to set aside the warrant for arrest of a fugitive and the arrest warrant against him, violated Article 6 (Art. 6) of the Convention, which, so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... ."

The Commission considers that the decisions complained of, while relating to criminal proceedings against the applicant, concerned exclusively the question whether the requirements for upholding the warrant for arrest of a fugitive and the arrest warrant, i.e. a strong suspicion of the offence at issue and a danger of his absconding, were still met. Although the decisions, thus, implied a finding as to whether there was a certain degree of suspicion against the applicant, they did not involve a finding of guilt (see mutatis mutandis, No. 11669/85, Dec. 7.12.87, D.R. 54 p. 95). The Commission finds that the contested decisions against the applicant did not constitute the determination of a criminal charge within the meaning or Article 6 (Art. 6) of the Convention. This provision is consequently not applicable.

It follows that the application is incompatible ratione materiae 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.F. BUQUICCHIO) — (C.L. ROZAKIS)