AS TO THE ADMISSIBILITY OF

Application No. 24656/94
by J. A.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 16 January 1996, 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. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 9 November 1993 by J. A. against Austria and registered on 20 July 1994 under file No. 24656/94;

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 they have been submitted by the applicant may be summarised as follows.

The applicant, born in 1923, is a British national and resident in New Malden, United Kingdom. In the proceedings before the Commission he is represented by M. A.A. Lintl, a lawyer practising in Vienna.

In 1928 the applicant's parents, both Jews, took residence in Vienna. On 11 September 1939 the applicant's father was arrested by the Vienna police authorities and he was deported to the concentration camp in Buchenwald on 2 October 1939, where he died on 3 April 1940. On 29 October 1941 the applicant's mother was deported to the Litzmannstadt ghetto where she died on 24 February 1943.

On 27 January 1992 the applicant applied for compensation under the Act on Compensation for Victims of National Socialist Persecution (Opferfürsorgegesetz), as a case of hardship (Härteausgleich), in respect of the detention of his parents under the National Socialist persecution.

On 18 May 1992 the Federal Ministry for Labour and Social Affairs (Bundesministerium für Arbeit und Soziales) decided that the

applicant's case was a case of hardship within the meaning of S. 15 a of the Act on Compensation for Victims of National Socialist Persecution and, pursuant to S. 13 of the Act, granted the applicant an amount of AS 9,890 as compensation in respect of his parents' detention.

In its decision, the Ministry noted that the applicant's first compensation claim under the Act on Compensation for Victims of National Socialist Persecution had been dismissed in 1967 on the ground that the statutory conditions of a ten years' residence before March 1938 or Austrian nationality at that time, as required under S. 13 c para. 3 (b) of the Act, had not been met. Following further investigations, it could be established that the applicant's late father had resided in Vienna between 10 May 1928 and 12 October 1939, and his late mother between 14 December 1928 and 29 October 1941. Having regard to the fact that the applicant's period of residence in Austria prior to March 1938 was only just short of the required period of ten years and that the applicant's late father had resided in Austria for more than ten years, the Ministry decided that the applicant had made out a case of hardship and that he should be granted compensation in respect of the detention of both parents.

The Ministry, in accordance with S. 13 a paras. 5 and 6 of the Act on Compensation for Victims of National Socialist Persecution, calculated the amount of compensation on the basis of the length of both parents' detention, as confirmed by the Arolsen International Search Service (Internationaler Suchdienst). According to S. 13 para. 5, the amount of compensation for each month of detention was AS 860, the applicant as survivor being granted half of this amount in accordance S. 13 a para. 6.

The applicant, represented by counsel, lodged a complaint with the Constitutional Court (Verfassungsgerichtshof) and the Austrian Administrative Court (Verwaltungsgerichtshof).

On 17 March 1993 the Constitutional Court refused to admit the applicant's complaint about in particular the lack of access to an independent and impartial tribunal, the peaceful enjoyment of his possessions and the equality of all citizens. The applicant personally received the decision on 13 May 1993.

On 13 September 1993, in the course of the proceedings before the Administrative Court, the Federal Ministry for Labour and Social Affairs amended its decision of May 1992 so as to grant compensation to the applicant in the amount of AS 10,750. The Ministry found that the applicant's objections to the calculation of the compensation claim on the basis of a total of 23 months detention were well-founded and that two further months detention had to be taken into account.

On 25 November 1993 the Administrative Court discontinued the applicant's appeal proceedings on the ground that the matter had been resolved, following the amended decision of 13 September 1993 which had granted in full the applicant's claims in the proceedings under the Act on Compensation for Victims of National Socialist Persecution.

COMPLAINTS

1. The applicant complains that the Austrian Act on Compensation for Victims of National Socialist Persecution only provides for compensation in respect of detention as such and not with regard to other damages due to the detention such as the death of the detainee. He invokes Article 5 paras. 1 and 5 of the Convention.

2. As regards his complaints under Article 5, the applicant also complains about discrimination contrary to Article 14 of the Convention in that, unlike for the period of detention as such, there is no compensation for other damages resulting from National Socialist

persecution.

3. The applicant complains under Article 6 para. 1 of the Convention that his compensation claims under the Act on Compensation for Victims of National Socialist Persecution were not decided by a civil tribunal established by law and that he did not have a public hearing before the Administrative Court.

THE LAW

1. The applicant complains under Article 5 paras. 1 and 5 (Art. 5-1, 5-5) of the Convention that the Austrian Act on Compensation for Victims of National Socialist Persecution only provides for compensation in respect of detention as such and not with regard to other damages due to the detention such as the death of the detainee.

The Commission observes that the applicant's claims relate to the persecution of his late parents under the National Socialist regime, i.e. a period prior to 3 September 1953, the date of entry into force of the Convention. However, the Convention only governs facts subsequent to its entry into force for each Contracting Party. Moreover, the Commission is not competent to examine complaints relating to the refusal or denial of compensation claims based on facts that occurred prior to the entry into force of the Convention. The Convention does not grant a right to compensation in respect of such events (Nos. 7655/76, 7656/76, 7657/76, Dec. 4.10.77, D.R. 12 p. 111). Article 5 para. 5 (Art. 5-5) of the Convention only refers to a deprivation of liberty in contravention of Article 5 paras. 1 to 4 (Art. 5-1, 5-4).

It follows that this part of the application is incompatible ratione temporis and, as regards the question of compensation claims, incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant also complains of discriminatory treatment under the Act on Compensation for Victims of National Socialist Persecution in respect of damages going beyond the mere detention under the National Socialist regime. He invokes Article 14, taken in conjunction with Article 5 (Art. 14+5), of the Convention.

The Commission recalls that Article 14 (Art. 14) only concerns discrimination in relation to rights and freedoms guaranteed by the Convention and its Protocols. However, the Commission has just found that the rights invoked by the applicant under Article 5 (Art. 5) fall outside the scope of the Convention ratione temporis or ratione materiae.

The applicant's complaint under Article 14 (Art. 14) is, therefore, incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2 (Art. 27-2).

3. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that his compensation claims under the Act on Compensation for Victims of National Socialist Persecution were not decided by a civil tribunal established by law and that he did not have a public hearing before the Administrative Court.

Article 6 para. 1 (Art. 6-1) provides, as far as relevant, as follows:

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

This provision guarantees to everyone the right to submit any

dispute relating to their "civil rights and obligations" to a tribunal meeting the requirements of Article 6 para. 1 (Art. 6-1) (cf. Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, p. 22, para. 50).

The Commission finds that to the extent that the applicant regards the compensation as provided for under the Austrian Act on Compensation for Victims of National Socialist Persecution as insufficient in respect of the damages suffered by his late parents as a consequence of their National Socialist persecution, his claims are not recognised under the Austrian legislation. However, Article 6 para. 1 (Art. 6-1) only extends to "contestations" (disputes) over (civil) "rights" which can be said, at least on arguable grounds, to be recognised under domestic law (cf. Eur. Court H.R., Neves E Silva judgment of 27 April 1989, Series A no. 153, p. 14, para. 37). As regards his compensation claims going beyond the provisions of the above Austrian legislation, the applicant cannot, therefore, rely on Article 6 para. 1 (Art. 6-1).

The applicant further complains under Article 6 para. 1 (Art. 6-1) about the proceedings concerning his claims under SS. 13 and 15 a of the Act on Compensation for Victims of National Socialist Persecution.

The Commission observes that the applicant did not meet all statutory conditions under the relevant legislation, but claimed compensation, as a case of hardship, in respect of his late parents' detention under the National Socialist regime. The question arises whether, having regard to the pecuniary nature of the applicant's claims under the Act on Compensation for Victims of National Socialist Persecution, a "civil right" within the meaning of Article 6 para. 1 (Art. 6-1) was at issue (cf. Eur. Court H.R., Editions Périscope judgment of 26 March 1992, Series A no. 234-B, p. 66, para. 40; Beaumartin judgment of 24 November 1994, Series A no. 296-B, pp. 60-61, para. 28; Masson and Van Zon judgment of 28 September 1995, paras. 50-52, to be published in Series A no. 327; No. 10865/84, Dec. 12.5.86, D.R. 47 p. 188). However, this question can be left open as the complaint is in any event inadmissible for the following reasons.

Proceedings in the applicant's case were conducted by the Federal Ministry for Labour and Social Affairs, the Constitutional Court and the Austrian Administrative Court. Thus, the Ministry for Labour and Social Affairs, in its decision of 18 May 1992, granted the applicant an amount of AS 9,890 as compensation in respect of his parents' detention. The applicant's complaint with the Constitutional Court remained unsuccessful. In the course of his appeal proceedings before the Administrative Court, the Ministry for Labour and Social Affairs, in its decision of 13 September 1993, accepted in full the applicant's objections as to the calculation of his compensation claim and amended its earlier decision accordingly. Thereupon, the Administrative Court discontinued the applicant's appeal proceedings on the ground that the matter had been resolved.

The Commission considers that the decision taken by the Ministry for Labour and Social Affairs on 13 September 1993 resolved any dispute regarding the applicant's compensation claim under the Act on Compensation for Victims of National Socialist Persecution. Consequently, there was no issue requiring determination by a tribunal, pursuant to Article 6 para. 1 (Art. 6-1). The Administrative Court's decision only related to the procedural matter of discontinuing the appeal proceedings. In these circumstances, there is no appearance of a breach of Article 6 para. 1 (Art. 6-1).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

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)