AS TO THE ADMISSIBILITY OF

Application No. 22900/93
by K. G.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 22 February 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. A.S. GÖZÜBÜYÜK
A. WEITZEL
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

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 August 1993 by K. G. against Austria and registered on 10 November 1993 under file No. 22900/93;

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 1957, is an Austrian national residing in Lienz. In the proceedings before the Commission he is represented by Mr. P. Wallnöfer, a lawyer practising in Innsbruck.

A. The particular circumstances of the case

In the night of 18 to 19 January 1992 a burglary was committed in a store of arms established in K., East Tirol, belonging to the Austrian Federal Armed Forces (Bundesheer). Automatic rifles and other equipment worth AS 380,000 were stolen.

On 19 February 1992, in the course of the police investigations, the applicant was arrested by the Tirol Security Directorate (Sicherheitsdirektion). On 20 February 1992 he was questioned by the Security Directorate as a suspect. Subsequently, he was released. Also on 20 February 1992 the applicant's brother, an officer of the Federal Armed Forces, was questioned as an informant (Auskunftsperson) by the Vienna Counter-Intelligence Office (Abwehramt). He was questioned again on 17 March 1992.

On 21 July 1992 the applicant's brother was questioned once more. He stated that he had had a conversation about stores of arms with his brother and several other persons about two or three years ago. He had exaggerated the security measures which applied in stores of arms. It

was possible that his brother or the burglars had taken his statements as a basis for their planning of the burglary but he was sure that his statements were not sufficient for any detailed planning. Upon further questioning he submitted that he had also said that such stores of arms contained automatic rifles of a particular type. He also admitted that they had also talked about the security measures on windows and doors of such stores of arms. The applicant's brother was further questioned on 11 and 12 August 1992.

On 13 August 1992 the Innsbruck Regional Court (Landesgericht), referring to S. 180 para. 2 subpara. 2 and 3 (c) of the Code of Criminal Procedure (Strafprozeßordnung), ordered the applicant's detention on remand (Untersuchungshaft). The Court found that there was a strong suspicion against the applicant of having aided and abetted the burglary and of having accumulated weapons (Ansammeln von Kampfmitteln). It referred in particular to the investigations carried out by the Tirol Security Directorate, to the investigations carried out by the court and to the statements of the applicant's brother. Moreover, the Court found, inter alia that, in view of the applicant's prior convictions, the nature of the stolen goods and the personality of the applicant there was a danger of his committing offences against property. The Court also noted that it had not yet been possible to find one further suspect. Although seven months had passed since the commission of the crime at issue, the latest developments in the proceedings showed a serious risk that the applicant might try to influence witnesses or other suspects.

On 18 August 1992 the applicant was taken into detention on remand (Untersuchungshaft).

On 19 August 1992 the applicant's brother was questioned by the investigating judge (Untersuchungsrichter) at the Innsbruck Regional Court. He was also suspected of having aided and abetted the burglary at issue and of having breached official secrecy. He confirmed the statements, which he had made before the police. Moreover, he submitted in particular that he had had a second conversation with his brother about one and a half or two years ago, in which the latter had inquired about the security measures of the store of arms. As he had thought that his brother might actually plan a burglary, he had exaggerated when describing the security measures.

On 31 August 1992 the applicant requested the Innsbruck Regional Court to release him. He submitted in particular the statements of his brother did not establish reasonable grounds to suspect him. Further, it was rather exceptional to assume that there was a danger of collusion seven months after the offence had been committed. His prior convictions were not sufficient to show that there was a danger of his committing offences. In these and the following proceedings the applicant was represented by counsel.

On 1 October 1992 the Judges' Chamber (Ratskammer) at the Innsbruck Regional Court held a hearing concerning the applicant's detention on remand (Haftprüfungsverhandlung) in presence of the applicant and his counsel and decided that the applicant's detention be continued on the grounds set out in S. 180 para. 2, subpara. 2 and 3 (c) of the Code of Criminal Procedure. It found, that there was a strong suspicion against the applicant of having aided and abetted the burglary at issue and of having accumulated weapons. It referred in particular to the statements of the applicant's brother, according to whom the applicant had twice asked him for detailed information on the store of arms. As regards the danger of collusion, the Judges' Chamber noted in particular that P., another suspect who had absconded, had contacted the applicant. Thus, there was a danger that the applicant might inform other suspects of the current state of the investigations. Finally, there was a danger of the applicant's committing offences.

On 27 October 1992 the Innsbruck Court of Appeal (Oberlandes-

gericht) dismissed the applicant's appeal (Beschwerde). It confirmed that there was a strong suspicion against the applicant as regards aiding and abetting the burglary at issue and the accumulation of arms. Moreover, the danger that the applicant might commit offences still subsisted. As regards the danger of collusion, it could no longer be invoked due to the lapse of time.

On 14 January 1993 the Innsbruck Public Prosecutor's Office (Staatsanwaltschaft) preferred the indictment against the applicant and eight co-accused. It charged the applicant with having aided and abetted the burglary in the K. store of arms and with the accumulation of weapons, in that he had, between the beginning of 1991 and January 1992 obtained information from his brother and had passed it on to the burglars, pertaining in particular to the type and value of the arms stored and the security measures applied.

On 24 to 26 February and on 22 to 26 and 29 and 30 March 1993, the trial was held before the Innsbruck Regional Court, sitting as a jury (Geschwornengericht). In the course of the hearing of 26 February 1993 the applicant again requested that he be released. He submitted in particular that, according to the results of the hearing, there was no suspicion against him. The Court refused his request and found that his detention had to be upheld on the grounds which had previously been established. The applicant did not lodge an appeal against this decision. He submits that this would have delayed the hearing.

On 24 March 1993 the applicant's brother, the proceedings against whom had been severed, was heard as a witness. He confirmed his statements before the police and the investigating judge.

On 30 March 1993 the applicant was acquitted and subsequently released on the same day.

Also on 30 March 1993 the Innsbruck Regional Court, sitting as a jury, dismissed the applicant's request for compensation for his detention on remand under S. 2 para. 1 (b) of the Criminal Proceedings Compensation Act (Strafrechtliches Entschädigungsgesetz). It found that it had neither been possible to reach a verdict nor to prove the applicant's innocence. Thus, he had been acquitted on the basis of the existence of a doubt.

On 12 May 1993 the applicant lodged an appeal with the Innsbruck Court of Appeal. He argued that his innocence had been proven.

On 8 June 1993 the Innsbruck Court of Appeal, sitting in private, dismissed the applicant's appeal. The Court found that, although some facts incriminating the applicant had not been proven by the taking of evidence, the hearing had not substantially changed the evaluation of evidence as regards the conversations between the applicant and his brother. This meant, in other words, that the suspicion against the applicant had not been dissipated.

B. Relevant domestic law

1. Code of Criminal Procedure (Strafprozeßordnung)

S. 180 para. 1 provides that a person may only be taken in detention on remand if there is strong suspicion against him of having committed a particular offence and if one of the reasons laid down in paras. 2 or 7 is given. According to paragraph 2 detention on remand may be ordered if there is a danger of absconding (subpara. 1), a danger of collusion (subpara. 2) or a danger that the suspect might commit offences (subpara. 3), e.g. an offence against the same object of legal protection as the one he is suspected of and as the offences he has already been convicted of twice (subpara. 3 c).

2. Criminal Proceedings Compensation Act (Strafrechtliches

Entschädigungsgesetz)

According to S. 2 para. 1 (b) a person who has been held in detention on remand may claim compensation for pecuniary damages, if he was acquitted, or if the proceedings against him were otherwise discontinued, and the suspicion that he had committed the offence in question did not subsist, or if there was a bar to prosecution which had already existed at the time of his detention.

As regards the proceedings, S. 6 provides inter alia that the court, which acquitted the person concerned or discontinued the proceedings has to decide whether the conditions set out in S. 2 para. 1 (b) are met. If the judgement was based on the verdict of a jury the court decides together with the jury (para. 2). The person concerned has to be heard and, if necessary, evidence has to be taken, insofar as it has not already been taken in the criminal proceedings (para. 3). The detained and the Prosecutor's Office have a right to appeal to the superior court which can take further evidence, if necessary (para. 5).

COMPLAINTS

1. The applicant complains under Article 5 para. 1 (c) and para. 3 of the Convention about his detention on remand. He submits in particular that the suspicion against him was unfounded from the beginning and was finally dissipated.

2. The applicant also complains under Article 6 that the proceedings relating to his request for compensation for his detention on remand did not comply with the minimum requirements set out in this Article. He submits that, in the contested compensation proceedings, no hearing is held nor is the claimant informed of the contents of the observations which the public prosecutor files with the court.

THE LAW

1. The applicant complains under Article 5 para. 1 (c) and para. 3 (Art. 5-1-c, 5-3) about his detention on remand.

Article 5 (Art. 5) of the Convention, 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 an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 c of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. ..."

As regards Article 5 para. 1 (c) (Art. 5-1-c) the applicant argues that his detention has not been based on a reasonable suspicion.

The Commission notes that the applicant did not lodge a complaint against the Innsbruck Regional Court's decision of 26 February 1993, which rejected his request for release. Therefore, the question whether the applicant has exhausted domestic remedies in accordance with Article 26 (Art. 26) of the Convention might arise. However, even assuming exhaustion of domestic remedies, the complaint has to be rejected for the following reasons.

The Commission recalls that it is not necessary to justify arrest or detention on remand that the reality and nature of the charges laid against the prisoner should be definitely proved, since this is the purpose of the official powers of investigation, and detention is designed to allow this process to proceed unhindered (No. 8118/77, Dec. 19.3.81, D.R. 25 p. 120; No. 10803/84, Dec. 16.12.87, D.R. 54 p. 38).

In the present case the applicant was taken into detention on remand by order of the Innsbruck Regional Court of 13 August 1992, on the strong suspicion of having aided and abetted burglary and of having accumulated weapons. This suspicion was largely based on the police investigations carried out by the Tirol Security Directorate and on the statements of the applicant's brother. The Commission notes that S. 180 para. 1 of the Austrian Code of Criminal Procedure allows a person to be placed in detention on remand, if there is strong suspicion of his having committed an offence. The Investigating Judge and the Judges' Chamber, in its decision of 1 October 1992, found that such a strong suspicion existed against the applicant, in particular having regard to the incriminating statements made by his brother. This decision was confirmed by the Innsbruck Court of Appeal of 27 October 1992 and again by the trial court on 26 February 1993.

In conclusion, the Commission finds that the applicant was lawfully detained and that there were reasonable grounds for suspecting him of having committed an offence within the meaning of Article 5 para. 1 (c) (Art. 5-1-c).

As regards Article 5 para. 3 (Art. 5-3) the applicant has not substantiated his complaint. The Commission notes that he was taken into detention on remand on 18 August 1992 and was released on 30 March 1993 following his acquittal. There is no appearance of undue delays on the part of the authorities. The Commission finds no indication that the length of the applicant's detention on remand was unreasonable and therefore contrary to Article 5 para. 3 (Art. 5-3).

It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains under Article 6 (Art. 6) that the proceedings relating to his request for compensation for his detention on remand did not comply with the minimum requirements set out in this Article.

Article 6 para. 1 (Art. 6-1) of the Convention, so far as relevant, provides that "in the determination of his civil rights ... everyone is entitled to a fair and public hearing ...".

The Commission recalls that the Court in its recent case law has applied Article 6 para. 1 (Art. 6-1) to proceedings concerning compensation claims against the State (Eur. Court H.R., Baraona judgment of 8 July 1987, Series A no. 122, pp.16-18, paras. 38-44; Éditions Périscope judgment of 26 March 1992, Series A no. 234-B, pp. 64-66, paras. 36-44), and found that a right which is "pecuniary" in nature is a civil right, irrespective of the origin of the dispute and the fact that courts other than civil courts decide on it (Éditions Périscope judgment, loc. cit, para. 40). The Commission recently found that Article 6 (Art. 6) was applicable to compensation proceedings concerning detention on remand (A.M. and J.v.Z. v. the Netherlands, Comm. Report 4.7.1994, paras. 49-54, to be published in D.R.). However, the Commission does not consider it necessary to decide this question, since in any event this complaint is manifestly ill-founded for the following reasons.

The applicant complains that, in the contested compensation

proceedings, no hearing is held nor is the claimant informed of the contents of the observations which the public prosecutor files with the court.

The Commission notes that S. 6 para. 3 of the Austrian Criminal Proceedings Compensation Act provides that the person concerned has to be heard by the court which takes the decision at first instance. If necessary, evidence has to be taken, insofar as it has not already been taken in the criminal proceedings. There is no indication in the file that this provision was violated in the applicant's case. In particular, the applicant, in the proceedings before the Innsbruck Regional Court which covered the compensation issue, was represented by counsel. In his appeal he did not complain of any procedural shortcomings of the proceedings in the first instance. Further, there is no indication that the public prosecutor filed observations with the court of which the applicant was not informed. The Commission, therefore, finds that the applicant, represented by counsel, failed to substantiate his complaint.

It follows that this part of the application also has to 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.F. BUQUICCHIO) — (C.L. ROZAKIS)