AS TO THE ADMISSIBILITY OF

Application No. 24251/94
by Josef KAROLYI
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 23 February 1994 by Josef KAROLYI against Austria and registered on 1 June 1994 under file No. 24251/94;

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

The applicant, born in 1958, is an Austrian national. When lodging his application he was detained at the Stein Prison in Krems.

On 1 January 1992 criminal proceedings were instituted against the applicant on suspicion of having shot a young woman and attempted to kill a second woman in the early morning of the same day.

On 27 October 1992 the Vienna Public Prosecutor's Office (Staatsanwaltschaft) filed an indictment charging the applicant with murder, attempted murder and unlawful possession of a firearm.

On 22 March 1993 the applicant's trial commenced before a Court of Assizes (Geschworenengericht) of the Vienna Regional Court (Landesgericht), sitting with a jury. In these and the ensuing proceedings the applicant was assisted by defence counsel.

At the hearing, which was continued on 23 March 1993, the Court heard the applicant's statements and the testimony of several witnesses. It also heard the opinion of a psychiatric expert on the

question of the applicant's criminal responsibility as well as the opinion of a forensic expert and of a technical expert. It follows from the trial record that questions were put to the witnesses by the Court, the Public Prosecutor and the applicant's defence counsel.

At the hearing on 23 March 1993, the applicant's counsel requested the taking of further evidence. These requests were dismissed for the following reasons. The Court found that both the psychiatric and the technical expert opinion were conclusive and without deficiencies, and that it was therefore not necessary to obtain further expert evidence. The requests to hear again two witnesses were dismissed on the grounds that both witnesses had been questioned in detail by the Court and the defence at the hearing the day before and that the evidence to be given was already covered by the expert opinions. As regards one further witness, the Court noted that the witness had not appeared at the hearing and that the attempts to bring her before the court had failed as her whereabouts were unknown. In any event, her eventual statements as well as those of another witness named by the defence were covered by the above expert opinions. Furthermore, no taking of evidence was necessary on the question as to whether the firearm deposited at the court and examined in the course of the proceedings had been exchanged, as the applicant had failed to show any circumstances to support such an assumption. Moreover, according to the opinion of the forensic expert, the bullet found in the victim's corpse had been fired with the firearm in question.

No further requests were put at the end of the hearing.

On 23 March 1993 the jury, by a unanimous verdict, found the applicant guilty of murder, of attempted murder and of unlawful possession of firearms. The jury also unanimously found that the applicant was criminally responsible.

The Court sentenced the applicant to life imprisonment.

On 31 August 1994 the Austrian Supreme Court (Oberster Gerichtshof) dismissed the applicant's plea of nullity (Nichtigkeitsbeschwerde).

In respect of the applicant's procedural complaints, the Supreme Court found that the Court of Assizes had correctly refused the applicant's request to take further evidence. The Supreme Court considered in particular that the applicant had failed to show specific circumstances necessitating the preparation of further expert opinions in addition to expert opinions which were conclusive and without any deficiencies. Moreover, no further hearing of witnesses had been necessary, taking into account in particular the concurrent findings of both the forensic and the technical expert.

On 18 October 1993 the Vienna Court of Appeal (Oberlandesgericht) dismissed the applicant's appeal against sentence (Berufung gegen den Strafausspruch). The decision was served on 16 November 1993.

COMPLAINTS

The applicant complains about his conviction by the Court of Assizes of the Vienna Regional Court of 23 March 1993 and the alleged unfairness of the court proceedings concerned. He submits that the Court of Assizes wrongly dismissed his requests to take further evidence. He submits that his defence counsel was not properly prepared at the trial and did not effectively assist him. The applicant invokes Article 6 of the Convention and Article 4 para. 2 of Protocol No. 7.

THE LAW

1. The applicant complains about his conviction by the Court of Assizes of the Vienna Regional Court, as confirmed by the Supreme

Court, and also of the court proceedings concerned.

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it 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 (cf. No. 21283/93, Dec. 5.4.94, D.R. 77-A pp. 81, 88 and Eur. Court H.R., Van de Hurk judgment of 19 April 1994, Series A no. 288, p. 20, para. 61; Klaas judgment of 22 September 1993, Series A no. 269, p. 17, para. 29).

The applicant, invoking Article 6 (Art. 6) of the Convention and Article 4 para. 2 of Protocol No. 7 (P7-4-2), alleges that he did not have a fair trial.

The Commission considers it appropriate to examine his complaints about the taking and assessment of evidence from the point of view of paragraphs 1 and 3 of Article 6 (Art. 6-1+6-3) taken together, especially as the guarantees in paragraph 3 represent aspects of the concept of a fair trial contained in paragraph 1 (Eur. Court H.R., Unterpertinger judgment of 24 November 1986, Series A no. 110, p. 14, para. 29).

Article 6 (Art. 6), so far as relevant, provides as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by a ... tribunal ...

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

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance ...

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 recalls that as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which the defendants seek to adduce. More specifically, Article 6 para. 3 (d) (Art. 6-3-d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system; it does not require the attendance and examination of every witness on the accused's behalf (cf., Eur. Court H.R., Bricmont judgment of 7 July 1989, Series A no. 158, p. 31, para. 89; Vidal judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, para. 33).

The Commission notes that the Court of Assizes regarded the taking of further evidence requested by the applicant as unnecessary, given the conclusive findings of the forensic and the technical expert in their respective opinions. This view was confirmed by the Supreme Court which, upon the applicant's procedural complaints in his plea of nullity, considered in particular that the applicant had failed to show any circumstances necessitating the taking of supplementary expert

advice.

In these circumstances, the Commission finds no sufficient grounds to conclude that the Court of Assizes's taking of evidence, as confirmed by the Supreme Court, was incompatible with Article 6 (Art. 6) of the Convention.

Moreover, having regard to the conduct of the proceedings against the applicant as a whole, the Commission finds no other indication of unfairness. In particular his submissions do not show that, assisted by counsel, he could not duly present his arguments in defence or could not effectively exercise his defence rights. Indeed, it can be seen from the trial record that counsel put numerous questions to the experts and witnesses and requested, though unsuccessfully, the taking of further evidence on the applicant's behalf.

Accordingly, there is no appearance of a violation of Article 6 (Art. 6) of the Convention.

The Commission further finds that the applicant's submissions do not raise any issue under Article 4 of Protocol No. 7 (P7-4).

It follows that 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)