AS TO THE ADMISSIBILITY OF

Application No. 23772/94
by Helmut KOLLER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 28 June 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 21 March 1994 by Helmut KOLLER against Austria and registered on 29 March 1994 under file No. 23772/94;

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 1942, is an Austrian national residing in Mödling. In the proceedings before the Commission he is represented by Mr. A. Friedberg, a lawyer practising in Vienna.

A. Particular circumstances of the case

From January 1991 to July 1992 the applicant, in his capacity as practitioner of the municipality of Mödling (Stadtarzt), carried out altogether thirty-one examinations of patients with an indication of mental illness in accordance with S. 8 of the Psychiatric Hospitals (Committal) Act (Unterbringungsgesetz).

On 8 January 1993 the Mödling District Administrative Authority (Bezirksverwaltungsbehörde) dismissed the applicant's claim for payment for the examinations carried out between January 1991 and July 1992.

On 27 July 1993 the Office of the Lower Austria Regional Government (Amt der niederösterreichischen Landesregierung) dismissed the applicant's appeal. It noted that the amendment to the

Practitioners' Act (Ärztegesetz), which had entered into force on 1 August 1992, had explicitly established a duty for practitioners working in public medical service, including practitioners of a municipality, to carry out the examinations at issue and had introduced a right to payment in relation to them. As regards the examinations carried out before 1 August 1992, the Office of the Lower Austria Regional Government found that the obligation of practitioners working in public medical service also followed from SS. 8 and 9 of the Psychiatric Hospitals (Committal) Act. However, no right to payment had been foreseen and the above amendment to the Practitioners' Act did not apply retroactively. Nevertheless, the work performed was not to be considered as forced or compulsory labour.

On 29 November 1993 the Constitutional Court (Verfassungsgerichtshof) dismissed the applicant's complaint for lack of sufficient prospects of success. The Court noted in particular that the work load, which the examinations at issue placed on practitioners working in public medical service, was not disproportionate.

The applicant did not pursue his complaint before the Administrative Court (Verwaltungsgerichtshof). He submits that this complaint would not have constituted an effective remedy as he had invoked his constitutionally guaranteed rights.

B. Relevant domestic law

The Psychiatric Hospitals (Committal) Act (Unterbringungsgesetz) entered into force on 1 January 1991.

S. 8 provides that a person may only be committed to a psychiatric hospital against his or her will, if a practitioner in public medical service or a police practitioner has examined him or her and has certified that the conditions for committal are met. These conditions are, according to S. 3, that a person suffering from a mental illness, would endanger his or her own life or health or would be a serious threat to the life or health of others.

According to S. 9, officers of the public security service are entitled and obliged to bring any person before a practitioner within the meaning of S. 8 in order to have him or her examined, if there are particular reasons to believe that the conditions for committal to a psychiatric hospital are met.

COMPLAINTS

The applicant complains under Article 4 para. 2 of the Convention that he was, between January 1991 and July 1992, obliged to carry out examinations under the Psychiatric Hospitals (Committal) Act without payment.

THE LAW

The applicant complains that he was obliged to carry out examinations under the Psychiatric Hospitals (Committal) Act without payment. He invokes Article 4 para. 2 (Art. 4-2) of the Convention, which reads as follows:

> "No one shall be required to perform forced or compulsory labour."

The Commission, assuming exhaustion of domestic remedies, recalls that the concept of forced or compulsory labour within the meaning of Article 4 para. 2 (Art. 4-2) comprises two elements. These elements are first that the labour or service must be performed by the person concerned against his will and secondly that the obligation to perform this labour or service must be either unjust or oppressive, or must itself constitute an avoidable hardship (No. 9322/81, Dec. 3.5.83, D.R.

32 p. 182).

In the present case, the applicant, in his capacity as practitioner of the municipality of Mödling, was obliged to carry out examinations of patients in accordance with SS. 8 and 9 of the Psychiatric Hospitals (Committal) Act, which entered into force on 1 January 1991. His claims for payment for thirty-one examinations carried out between January 1991 and July 1992 remained unsuccessful. The competent authorities found that an amendment of the Practitioners' Act, entitling practitioners employed in public medical service to claim payment for the examinations at issue, only entered into force on 1 August 1992 and did not apply retroactively.

As regards the first condition for establishing whether the applicant had to perform forced or compulsory labour, the Commission finds that the applicant freely entered the public medical service. At the time, when he became practitioner of the municipality of Mödling, he might not have been able to foresee that he would have to carry out examinations of patients under the Psychiatric Hospitals (Committal) Act of 1991. However, the examinations under S. 8 of this Act relate to a kind of emergency situation, where there might be a danger for the patient's or other people's lives and, thus, do not fall outside the ambit of the normal activities of a practitioner (see mutatis mutandis, Eur. Court H.R., Van der Mussele judgment of 29 September 1982, Series A no. 70, p. 17 et seq., paras. 36-39).

As regards the second condition, the Commission considers that the work performed by the applicant served the general interest. Given the number of examinations he actually carried out, namely thirty-one examinations over a period of one and a half years, the burden imposed on him does not appear disproportionate. In these circumstances, the work complained of cannot be considered as being unjust or oppressive or as constituting avoidable hardship.

In conclusion, the Commission finds that there is no appearance of a violation of Article 4 para. 2 (Art. 4-2) of the Convention.

It follows that the application is 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)