AS TO THE ADMISSIBILITY OF

Application No. 19165/91
by Friedrich KREMZOW
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 30 November 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
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 4 October 1991 by Friedrich Kremzow against Austria and registered on 6 December 1991 under file No. 19165/91;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 11 January 1994 and the observations in reply submitted by the applicant on 9 March 1994;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they have been submitted by the parties, may be summarized as follows.

The applicant, born in 1938, is an Austrian national. At present he is serving a life sentence for murder in the prison of Vienna-Mittersteig. Before the Commission he is represented by Mr. W.L. Weh, a lawyer practising in Bregenz, and Mr. H. Mühlgassner, a lawyer practising in Vienna.

In connection with the criminal proceedings at issue in the present case the applicant's wife had also introduced an application to the Commission (Appl. No. 15886/89, pending before the Committee of Ministers). The applicant has introduced a further application in relation to the criminal proceedings at issue in the present case (No. 23506/94). In the latter application he complains again under Article 6 para. 1 about the alleged unfairness of the proceedings, but also under Article 6 para. 2 that the decision to discontinue the

proceedings violated the presumption of innocence.

On 29 June 1984 the Tax Office (Finanzamt) for the 6th, 7th and 15th District of Vienna instituted administrative criminal proceedings under the Code of Tax Offences (Finanzstrafgesetz) against the applicant on suspicion of evasion of taxes in the years 1977 to 1982 as co-offender together with his wife. The Tax Office stated that the exact amount of the evaded tax would have to be established in separate tax assessment proceedings, and indicated the applicable provisions of the Code of Tax Offences.

On 30 April 1984 the Tax Office issued tax assessment orders (Abgabenbescheide) against the applicant's wife concerning value added tax from 1979 to 1983 and income tax from 1978 to 1982. On 4 December 1987 the Tax Office dealing with the criminal proceedings was informed that these tax assessment orders had become final.

On 18 December 1987 the applicant, referring to the length of the proceedings, requested that they be transferred to the Regional Directorate of Finance for Vienna, Lower Austria and the Burgenland (Finanzlandesdirektion). On 2 March 1988 the Regional Directorate dismissed this request.

On 9 May 1988 the Tax Office informed the applicant on the amount of taxes evaded in the years between 1979 and 1981 and instructed him to submit a written statement by 10 June 1988. The applicant's appeal in this respect was eventually dismissed by the said Regional Directorate of Finance on 14 November 1990, a further appeal was to no avail.

In 1988 and 1992 the applicant unsuccessfully lodged requests for access to the complete case-file. Further proceedings before the Administrative Court (Verwaltungsgerichtshof) concerned his complaints about inactivity of the administrative authorities in dealing with his case.

On 18 May 1992 the applicant's case file was transmitted to the Trial Board, together with a detailed statement of the charges against the applicant. This statement of the Tax Office was served on the applicant on 21 May 1992.

On 25 June 1992 the Trial Board discontinued the criminal proceedings against the applicant. The Trial Board found that, as regards the taxes for the years 1979 and 1980, the proceedings had meanwhile become time-barred. As regards the taxes for the year 1981, it could not be established that the applicant had deliberately committed tax evasion and that the sums negligently evaded by the applicant would not require the continuation of the criminal proceedings. Furthermore, as the applicant was serving a prison sentence for life, there was no necessity for issuing a formal warning (Verwarnung) against him.

On 14 June 1993 the Constitutional Court (Verfassungsgerichtshof) refused to entertain the applicant's complaint against the Trial Board's decision of 25 June 1992.

COMPLAINTS

1. The applicant complains that the criminal proceedings instituted against him had not been concluded within a reasonable time as required by Article 6 para. 1 of the Convention.

2. The applicant further complains under Article 6 para. 3 (a) of the Convention that he had not been informed in detail of the nature and cause of the accusations against him.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 4 October 1991 and registered on 6 December 1991.

On 13 October 1993 the Commission decided to communicate the application to the respondent Government and to request them to submit their written observations on the admissibility and merits.

The Government's observations were submitted on 11 January 1994. On 9 March 1994 the applicant submitted his observations in reply.

THE LAW

1. The applicant complains about the length of the criminal proceedings instituted against him under the Code of Tax Offences. He relies on Article 6 para. 1 (Art. 6-1) of the Convention which, as far as relevant, provides as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Government submit that the applicant can no longer claim to be a victim of an alleged violation of Article 6 para. 1 (Art. 6-1) of the Convention as regards the length of the proceedings, because these criminal proceedings had been discontinued. They consider that the discontinuation of the proceedings should be regarded as a compensation under domestic law for unreasonable length of proceedings.

The Commission recalls that only if a domestic authority expressly or in substance acknowledges the existence of a breach of Article 6 para. 1 (Art. 6-1) of the Convention on account of the length of the proceedings and if redress has been given, an applicant can no longer claim to be a victim of such a violation of the Convention (see Eur. Court H.R., Eckle judgment of 15.7.82, Series A No. 51, p. 30, para. 66; No. 10884/84, Dec. 13.12.84, D.R. 41 p. 252; Pannetier v. Switzerland, Comm. Report 12.7.85, para. 73, D.R. 46 p. 32).

In the present case the Commission notes that the Trial Board's decision of 25 June 1992 to discontinue proceedings was based on the grounds that they have become time barred and that there were no reasons warranting their continuation. These findings do neither constitute an acknowledgment of the existence of a breach of the Convention, nor redress. In these circumstances, the applicant can still claim to be a victim of an alleged violation of Article 6 para. 1 (Art. 6-1) of the Convention as regards the length of the proceedings.

The Government submit further that delays in the proceedings were due to the applicant's conduct, in particular the filing of his numerous appeals, which continuously delayed the proceedings as the files were not available to the Tax Office.

The applicant submits that delays in the proceedings were due to the inactivity of the authorities.

The Commission considers, in the light of the criteria established by the case-law of the Convention organs on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that a thorough examination of this complaint is required, both as to the law and as to the facts.

2. The applicant further complains under Article 6 para. 3 (a) (Art. 6-3-a) of the Convention that he had not been informed in detail of the nature and cause of the accusations against him.

The Commission recalls that the guarantees contained in paragraph 3 of Article 6 (Art. 6-3) of the Convention are specific aspects of the general concept of fair trial set forth in paragraph 1 of this Article (see Eur. court H.R., Isgrò judgment of 19 February 1991, Series A no. 194-A, p.12, para. 31).

The question whether a trial is in conformity with the requirement of fairness of Article 6 para. 1 (Art. 6-1) of the Convention must be considered on the basis of the examination of the proceedings as a whole. However, an examination of the proceedings as a whole is not possible where they have been discontinued (see No. 10300/83, Dec. 12.12.84, D.R. 40 p. 180).

In the present case the Trial Board by decision of 25 June 1992 discontinued the criminal proceedings against the applicant. On 14 June 1993 the Constitutional Court refused to entertain the applicant's complaint against the Trial Board's decision.

Accordingly there is no appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention in this respect.

This part of the application, therefore, is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant's complaint regarding the length of the criminal proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)