AS TO THE ADMISSIBILITY OF

Application No. 23506/94
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 2 February 1994 by Friedrich KREMZOW against Austria and registered on 16 February 1994 under file No. 23506/94;

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 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. H. Mühlgassner, a lawyer practising in Vienna.

In relation to the criminal proceedings at issue the applicant has also introduced a previous application (No. 19165/91), in which he complained under Article 6 para. 1 about the length of the proceedings and under Article 6 para. 3 (a) that he had not been informed in detail of the nature and cause of the accusations against him.

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 of his wife.

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.

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. 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. The Constitutional Court found that his complaint had no prospect of success and that the matter at issue was not excluded from the competence of the Administrative Court (Verwaltungsgerichtshof).

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that contrary to this provision no oral hearing had taken place before the Trial Board and that the Trial Board's decision had not been pronounced publicly. He further complains that the Trial Board could not be considered an independent and impartial tribunal within the meaning of Article 6 para. 1 of the Convention.

2. He further complains under Article 6 para. 2 of the Convention that the reasoning of the Trial Board's decision to discontinue proceedings violated the presumption of innocence. He submits that the decision of the Trial Board contained the statement that the applicant was guilty of a tax offence.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that contrary to this provision no oral hearing had taken place before the Trial Board and that the Trial Board's decision had not been pronounced publicly. He further complains that the Trial Board could not be considered a tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

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 to discontinue 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.

2. The applicant further complains under Article 6 para. 2 (Art. 6-2) of the Convention that the Trial Board's decision to discontinue proceedings violated the presumption of innocence. He submits that the decision of the Trial Board contained the statement that the applicant was guilty of a tax offence. He also submits that

Section 25 para. 1 of the Code of Tax Offences is incompatible with Article 6 para. 2 (Art. 6-2) of the Convention.

However, the Commission is not required to decide whether or not the facts, alleged by the applicant disclose any appearance of a violation of Article 6 para. 2 (Art. 6-2) of the Convention as, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognized rules of international law.

The Commission notes that on 14 June 1993 the Constitutional Court refused to entertain the applicant's complaint against the Trial Board's decision of 25 June 1992 noting that the matter was not excluded from the competence of the Administrative Court. The applicant failed to show that he subsequently seized the Administrative Court.

It follows that the applicant has not complied with the conditions of Article 26 (Art. 26) of the Convention in this respect, and this part of the application must accordingly be rejected under Article 27 para. 3 (Art. 27-3) 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) — (A. WEITZEL)