AS TO THE ADMISSIBILITY OF

Application No. 30887/96
by Zvone LONCARIC
against Slovenia

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
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 2 March 1996 by Zvone LONCARIC against Slovenia and registered on 1 April 1996 under file No. 30887/96;

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 applicant is a Slovenian citizen born in 1953. He is detained on remand at Radovljica Prison. Before the Commission he is represented by Mr. A. Rus, a lawyer practising in Maribor. The facts of the case, as they have been submitted by the applicant, may be summarised as follows.

A. The particular circumstances of the case

On 17 April 1995, in the course of a quarrel, the sister of the applicant's partner was wounded by a bullet while she was trying to take a pistol away from the applicant. After the incident the applicant went, of his own initiative, to a police station where he was arrested.

On 18 April 1995 the Kranj District Court (Okrozno sodisce) remanded the applicant in custody. It considered his detention necessary within the meaning of Section 201 para. 2 (2) and (3) of the Code of Criminal Procedure (see "The relevant domestic law" below).

On 11 August 1995 the applicant went on hunger strike as he considered that his detention on remand was unlawful and that the judges dealing with his case were biased. He was examined by experts several times. On 24 January 1996 he collapsed. He was placed in a hospital and perfusion was administered to him. On 29 January a TV-

team wanted to make an interview with the applicant but he was brought back to the prison. He decided to remain on hunger strike.

According to an expert's report dated 6 March 1996, the applicant refused to be examined thoroughly. The expert found, inter alia, that the applicant was weak and had problems with concentration due to considerable loss of weight. For this reason the applicant was not able to attend court hearings. In the expert's view the amount of food the applicant was partaking was sufficient for the preservation of his life. The expert considered that the applicant could recover entirely within 2 to 4 weeks if he ceased striking.

The following relevant events occurred and decisions were taken in the course of the applicant's detention.

1. Criminal proceedings against the applicant

On 22 June 1995 the Kranj District Prosecutor filed the bill of indictment charging the applicant with attempted murder pursuant to Section 127 para. 1 of the Criminal Code and with threatening the security of other persons pursuant to Section 145 para. 1 of the Criminal Code.

The main hearing was to be held from 7 to 11 August 1995. It was postponed as the applicant had challenged the President of the Kranj District Court's chamber which was dealing with his case. The main hearing was then scheduled for 20 September 1995 but was postponed because a judge was ill.

The next hearing was to start on 10 October 1995. However, the applicant informed the court that he was not able to attend it due to his hunger strike. The hearing was postponed.

Further hearings were scheduled for 24 October 1995, 9 January and 7 March 1996 respectively. Prior to each hearing an expert established that the state of the applicant's health (which was due to his hunger strike) excluded his attendance. For this reason the hearings were postponed.

2. Proceedings concerning prolongation of the applicant's detention on remand

On 26 June 1995, i.e. after the file of indictment had been lodged, the Kranj District Court prolonged the applicant's detention on remand by two months pursuant to Section 207 para. 2 of the Code of Criminal Procedure. On 24 August 1995 it prolonged the applicant's detention again. The District Court considered that the detention was necessary within the meaning of Section 201 para. 2 (3) of the Code of Criminal Procedure.

On 23 October 1995 the Kranj District Court decided to prolong the applicant's detention on remand. It pointed out that no relevant new facts could have been established in the applicant's case because the hearings had had to be postponed, and that the detention was necessary within the meaning of Article 20 of the Constitution and of Section 201 para. 2 (3) of the Code of Criminal Procedure.

The District Court recalled that prior to the incident the applicant had verbally threatened his partner and her sister, aimed a pistol from a small distance at the latter, and that the file provided sufficient evidence for bringing charges against him. In the court's view, the applicant's aggressive and uncontrolled behaviour made his further detention necessary in order to prevent him from carrying out his threats. The court noted that the health care granted to the applicant was adequate and held that the applicant's state of health, due to the hunger strike in which the applicant had engaged himself, was not a relevant reason for releasing him.

The applicant lodged a complaint against this decision. He maintained that there was no real danger of his completing the offence of which he was accused or committing further offences. He pointed out that after the incident he had not made any attempts to commit the offence of which he was accused but had gone to the police of his own initiative. He also challenged the evidence against him.

On 30 October 1995 the Ljubljana Higher Court (Visje sodisce) upheld the District Court's decision. It held that the evidence available was sufficient for remanding the applicant in custody. The Higher Court also recalled that the Kranj District Court could not proceed with the case and establish possible new relevant facts because of the applicant's hunger strike.

On 4 November 1995 the applicant lodged a constitutional complaint. He complained, inter alia, that the reasons for his detention on remand invoked by the Kranj District Court and the Ljubljana Higher Court were fictitious and irrelevant. In particular, he claimed that he had proved that he was able to control his behaviour as he had not completed the act which was imputed to him but had given himself up to the police immediately after the incident.

The Constitutional Court dismissed the complaint on 7 December 1995. It found that the interference with the applicant's constitutional right to liberty was necessary for the protection of the life and security of both his partner and her sister. The Constitutional Court held that the ordinary courts had examined the particular circumstances of the applicant's case and had given sufficient and relevant reasons for their decisions.

In the Constitutional Court's view, a person's hunger strike could not be accepted, in a State of law, as a legally relevant means of affecting lawful decisions of State organs. The Constitutional Court also recalled that it could not act as a court of appeal in respect of decisions of the ordinary courts.

On 21 December 1995 the Kranj District Court prolonged the applicant's detention pursuant to Section 207 para. 2 of the Code of Criminal Procedure. It recalled that because of the applicant's hunger strike it had not been possible to proceed with his case. The court concluded from the record which had been drawn at the place of the incident, from photographic and forensic experts' evidence, from records of statements made by the wounded person and four witnesses, and from other documents included in the file that the applicant could reasonably be suspected of having committed the offences with which he was charged.

The court recalled that before his partner's sister had been wounded the applicant had behaved in an aggressive manner, that he had verbally threatened his partner and had aimed a pistol at her from a small distance. The court considered that these facts permitted to conclude that there was a danger of the applicant's acting in a similar way again. The applicant's further detention was therefore necessary for the protection of security of both his partner and her sister and was, therefore, compatible with Section 201 para. 2 (3) of the Code of Criminal Procedure.

The applicant lodged a complaint against this decision. He maintained that the courts should take into consideration that instead of giving himself up to the police he could have completed the acts or carry out the threats imputed to him if that had been his intention. In his view, this proved that he had been able to control his behaviour, and that he represented no danger for his partner and her sister any longer.

The complaint was dismissed by the Ljubljana Higher Court on

29 December 1995. The Higher Court held that if the applicant were released, he could not be prevented from meeting his partner or her sister. The court concluded from an expert's opinion and other evidence included in the file that the applicant's reactions were inadequate and unforeseeable to such an extent that the apprehensions for his partner's and her sister's security in case of his release were justified. Furthermore, the fact that the applicant had gone to the police after the incident did not exclude his possible acting in a similar way again or carrying out his threats.

On 5 February 1996 the Supreme Court (Vrhovno sodisce) dismissed the applicant's appeal for preservation of law which concerned the Higher Court's decision of 29 December 1995. The Supreme Court held that the reasons for which the lower instances had decided to prolong the applicant's detention were sufficient and relevant.

On 19 February 1996 the Kranj District Court prolonged the applicant's detention pursuant to Section 207 para. 2 of the Code of Criminal Procedure. It recalled that the court hearings had been postponed several times as the applicant had been incapable, because of his hunger strike, of attending them. The court referred to its decision of 21 December 1995 and held that in view of the evidence available the applicant could reasonably be suspected of having committed the offences imputed to him.

A further decision to prolong the applicant's detention on remand was taken by the Kranj District Court on 18 April 1996. The court referred, inter alia, to an expert's opinion according to which the applicant had an unstable personality with a low threshold of tolerance. This resulted in his reduced capacity to control his behaviour. The District Court held that the aforesaid facts, as well as other evidence included in the file substantiated sufficiently the apprehension that he could complete the act imputed to him or carry out his threats.

The District Court also noted that the applicant was on hunger strike and that his physical capacities were considerably reduced. It considered this fact irrelevant because, according to the expert's opinion of 6 March 1996, the applicant could recover entirely within 2 to 4 weeks if he started partaking food.

The applicant lodged a complaint. He challenged the evidence against him and alleged that the District Court had misinterpreted the expert's opinion concerning his personality.

The complaint was dismissed by the Ljubljana Higher Court on 24 April 1996. The Higher Court held that the evidence against the applicant permitted to suspect him, on reasonable grounds, of the offences for which he had been indicted. It recalled that several witnesses had confirmed, inter alia, that the applicant had repeatedly threatened his partner who had therefore decided to move away. The Higher Court considered that the applicant's being on hunger strike confirmed the expert's opinion concerning his personality.

3. Proceedings concerning the applicant's request for release

On 11 December 1995 the Kranj District Court refused to release the applicant as it held, for the same reasons for which it had prolonged his detention, that he represented danger for his partner and her sister.

The applicant challenged this decision before the Constitutional Court. He alleged that the District Court had decided erroneously and had violated, inter alia, his right to a fair hearing by a tribunal guaranteed by Article 23 of the Constitution.

The Constitutional Court rejected the complaint on 12 March 1996.

It held that the District Court had established, for reasons set out in its decision, that the applicant's detention was necessary for protection of other persons, i.e. for a relevant reason under Article 20 of the Constitution. It found no violation of the applicant's constitutional rights.

4. Proceedings concerning the applicant's requests for his case to be transferred to a different court

On 24 August 1995 the applicant informed the District Court that since 11 August 1995 he had been on hunger strike and requested that his case should be dealt with by the District Court in Ljubljana. On 12 September the applicant lodged a formal request in this respect. It was dismissed by the Ljubljana Higher Court on 15 September 1995.

On 26 October and on 15 November 1995 respectively the Ljubljana Higher Court dismissed further two requests by the applicant that his case should be transmitted to a different court. The applicant lodged constitutional complaints against these decisions. He referred to Section 35 of the Code of Criminal Procedure according to which a case shall be transmitted to a different court if it is obvious that it will facilitate the conduct of the proceedings. The applicant complained that the Higher Court had not taken into account that he was on hunger strike also because his case was dealt with by the Kranj District Court's judges, and that his life was in danger. He alleged a violation of his constitutional right to have his case tried by an impartial judge.

On 22 November and on 19 December 1995 respectively the Constitutional Court refused to admit the complaints for further proceedings. It held, inter alia, that the applicant's being on hunger strike could not be considered as a relevant reason for transmitting his case to a different court, and that the applicant had submitted no relevant information indicating lack of impartiality of the Kranj District Court's judges.

On 5 January 1996 the Supreme Court dismissed the applicant's appeal for preservation of law which the applicant had lodged in respect of the aforesaid Ljubljana Higher Court's decisions of 26 October and of 15 November 1995.

On 29 January and on 1 February 1996 the applicant reiterated his request that his case should be transmitted to the Ljubljana District Court. The request was dismissed by the Ljubljana Higher Court on 6 February 1996 on the ground that the applicant's hunger strike could not be considered as a relevant reason for exclusion of the Kranj District Court's judges.

B. The relevant domestic law

Section 20 of the Constitution provides that a person reasonably believed to have committed a criminal offence may be arrested, but only by order of a court and only where such an arrest is absolutely necessary for the proper conduct of criminal proceedings or for the protection of society. Within 24 hours after the arrest the person concerned must be handed a notice in writing of the order of the court, with the reasons for his or her arrest. A person so arrested has the right to appeal against such an order, and his or her appeal must be determined by a court within 48 hours. The duration of any detention so ordered shall only be for such period as is allowed by statute, with the longest allowable period being three months from the day of arrest. This period may be extended by another three months by the Supreme Court. If no charges are laid by the end of this period, the accused person must be released.

Pursuant to Section 201 para. 2 (2) of the Code of Criminal Procedure a person can be remanded in custody if there is a serious

risk that he or she would destroy the traces of an offence or obstruct the proceedings by exercising undue influence on the witnesses or other persons involved in the proceedings.

In accordance with Section 201 para. 2 (3) of the Code of Criminal Procedure a person can be remanded in custody if the particular circumstances of the case indicate the existence of real danger of his or her repeating an offence, completing an attempted offence or committing an offence which he or she threatened to commit vis-à-vis another person.

Section 207 para. 2 of the Code of Criminal Procedure provides that a court shall examine ex officio every two months whether a person's detention is still necessary and deliver a decision by which the detained person is either released or his or her detention on remand is prolonged.

COMPLAINTS

The applicant complains that he has been detained on remand unlawfully as the reasons for which the courts decided to prolong his detention are erroneous and irrelevant. In particular, he complains that the courts (i) ignored that he had given himself up to the police after the incident, (ii) considered, in disregard of the state of his health, that he could represent a danger for his partner and her sister if released, and (iii) relied on false or inaccurate evidence against him.

The applicant considers that by the aforesaid facts and by the refusal to transfer his case to a different District Court his right to a fair hearing by an impartial tribunal and to be presumed innocent was violated. He alleges a violation of Articles 6 and 13 of the Convention.

THE LAW

1. The applicant complains that he has been detained unlawfully because the reasons on which the courts based themselves in deciding to prolong his detention on remand are erroneous and irrelevant. The Commission considers that this complaint should be examined under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention which provides as follows:

> "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;"

The Commission recalls that in order to comply with the requirements of Article 5 para. 1 (Art. 5-1) of the Convention, a person's deprivation of liberty has to be lawful. Lawfulness implies conformity with the substantive and the procedural rules of domestic law and also with the purpose of Article 5 (Art. 5), namely to protect individuals from arbitrariness (cf., i.e, Eur. Court HR, Winterwerp v. the Netherlands judgment of 24 October 1979, Series A no. 33, p. 16, para. 37; Wassink v. the Netherlands judgment of 27 September 1990, Series A no. 185-A, p. 11, para. 24).

In addition, Article 5 para. 1 (c) (Art. 5-1-c) of the Convention requires that there was either a reasonable suspicion of the arrested

or detained person having committed the offence in question or that the arrest or detention was reasonably considered necessary to prevent his or her committing an offence or fleeing after having done so.

The Commission notes that the applicant was arrested on 17 April 1995. On 18 April 1995 the Kranj District Court remanded him in custody. The bill of indictment was filed on 22 June 1995. Subsequently, the Kranj District Court decided to extend the applicant's detention on remand on 26 June, 24 August, 23 October, 21 December 1995, on 19 February and on 18 April 1996 pursuant to Section 207 para. 2 of the Code of Criminal Procedure. On 11 December 1995 the Kranj District Court dismissed the applicant's request for release.

Upon complaints lodged by the applicant the Kranj District Court's decisions concerning the prolongation of his detention were reviewed on 30 October 1995, on 29 December 1995 and on 24 April 1996 by the Ljubljana Higher Court. In addition, the lawfulness of the applicant's detention was examined by the Supreme Court on 19 February 1996, and on 7 December 1995 and 12 March 1996 respectively the Constitutional Court found that it was in conformity with the Constitution.

The applicant has been kept in detention pursuant to Section 201 para. 2 (3) of the Code of Criminal Procedure according to which a person can be remanded in custody if the particular circumstances of the case indicate the existence of a real danger of his or her repeating an offence, completing an attempted offence or committing an offence with he or she threatened to commit vis-à-vis another person. On 12 March 1996 the Constitutional Court found that his detention was necessary for the protection of other persons which is a relevant reason under Article 20 of the Constitution. The applicant's deprivation of liberty had, therefore, a legal basis under Slovenian law.

The Commission notes that the Kranj District Court, when deciding to prolong the applicant's detention on remand, and the Ljubljana Higher Court, when reviewing these decisions, concluded from the record which had been drawn at the place of the incident, from photographic and experts' evidence, from statements made by the wounded person and four witnesses and from other documents included in the file that the applicant could reasonably be suspected of having committed the offences for which he had been indicted.

The courts further found that prior to the incident in which his partner's sister had been wounded the applicant had behaved aggressively, that he had verbally threatened his partner and had aimed a pistol at her from a small distance. They referred to expert's evidence according to which the applicant had an unstable personality with a low threshold of tolerance which resulted in his reduced capacity to control his behaviour. The courts therefore considered that the applicant still represented a danger for his partner and her sister which rendered his further detention on remand necessary.

The Commission notes that the aforesaid courts also dealt with the applicant's arguments that he should be released but refused, for reasons set out in their decisions, to accept them. In particular, they held that the applicant's hunger strike could not be considered as a relevant reason in considering whether he should be released. As to the evidence challenged by the applicant, the courts noted that it was for the court examining the charges against him to establish whether the evidence was well-founded.

Furthermore, on 7 December 1995 the Constitutional Court found that the general courts had examined the particular circumstances of the applicant's case and had given sufficient reasons for their decisions. On 19 February 1996 the Supreme Court expressed a similar

view.

In these circumstances, the Commission finds that the aforesaid reasoning of the Slovenian courts reveals neither abuse of authority nor arbitrariness, and that the applicant's detention on remand could reasonably be considered necessary to prevent his committing concrete and specific offences within the meaning of Article 5 para. 1 (c) (Art. 5-1-c) of the Convention (cf. Eur. Court HR, Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 38, para. 102).

The applicant's submissions do not, therefore, disclose any appearance of a violation of his rights under Article 5 para. 1 (Art. 5-1) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant also complains about the refusal to transfer his case to another court. He considers that the proceedings in his case have not been fair and that the courts have not presumed him innocent. He alleges a violation of Article 6 (Art. 6) of the Convention which provides, so far as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an ... impartial tribunal established by law...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."
> ...

a) To the extent that the applicant alleges that his right to a fair hearing by an independent and impartial tribunal was violated, the Commission notes that the criminal proceedings against him are still pending before the first instance court. This complaint is therefore premature.

b) The applicant further alleges a violation of his right to be presumed innocent.

The Commission recalls that the authorities do not violate Article 6 para. 2 (Art. 6-2) of the Convention if they state that a suspicion exists. What is excluded, however, is a formal declaration that somebody is guilty (cf. No. 10847/84, Dec. 7.10.85, D.R. 44 p. 238, with further references).

In the present case the courts which examined whether the applicant should be detained on remand held, with reference to the evidence included in the file concerning his case, that the applicant could reasonably be suspected of having committed the offences imputed to him. In the Commission's view this finding cannot be considered as a formal declaration that the applicant is guilty, nor does it affect the applicant's rights of defence.

The Commission therefore considers, and even assuming that the applicant has complied with the requirement as to the exhaustion of domestic remedies in this respect, that the examination of this complaint does not disclose any appearance of a violation of the applicant's rights guaranteed by Article 6 para. 2 (Art. 6-2) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Finally, the applicant alleges a violation of Article 13 (Art. 13) of the Convention which provides as follows:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls that the guarantees of Article 13 (Art. 13) apply only to a grievance which can be regarded as "arguable" (cf. Eur. Court HR, Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 14, para. 31, with further references). In the present case the Commission has rejected the substantive claims as being manifestly ill-founded. Accordingly, they cannot be regarded as "arguable".

It follows that this part of 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber