Application No. 16412/90
by M. G.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 6 April 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. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

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 18 January 1990 by M. G. against Austria and registered on 6 April 1990 under file No. 16412/90;

Having regard to:

the report provided for in Rule 47 of the Rules of Procedure of the Commission;

the applicant's statement of 18 January 1994 that she does not wish to pursue her application;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Austrian citizen born in 1967. She is represented before the Commission by Mr. H. Pochieser, a lawyer practising in Vienna. The facts of the case, as submitted by the applicant's representative, may be summarised as follows.

On 12 September 1988 the applicant took part in a demonstration on St. Stephen's Square (Stefansplatz) in Vienna. At about 19.00 hours the applicant was arrested on suspicion of having committed offences under Sections VIII and IX of the Introductory Provisions to the Administrative Procedure Acts (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen).

The applicant was taken to Innere Stadt Police Station, where she was charged with offences under Sections VIII and IX of the Introductory Provisions to the Administrative Procedure Acts and, after her identity had been checked, she was released at 22.40 hours. The administrative criminal proceedings against the applicant were not pursued and have now become statute-

barred.

The applicant made a constitutional complaint to the Constitutional Court (Verfassungsgerichtshof) which, on 19 June 1989 (decision received by the applicant's representative on 19 July 1989) dismissed the complaint.

The Constitutional Court found it unnecessary to take any further evidence, as requested by the applicant, and found that the policemen who arrested her could reasonably have considered that she was caught in the act of committing an administrative offence, such that Article 35 (c) of the Code of Administrative Offences (Verwaltungsstrafgesetz) justified the detention. The Constitutional Court further considered that, notwithstanding Article 36 of the Code of Administrative offences, there were no particular circumstances which required the applicant to be released, even though the act of arresting her had, itself, removed the continuing ground for arrest.

The Constitutional Court did not hold an oral hearing.

On 27 November 1989 the Constitutional Court rejected the applicant's request for the proceedings to be re-opened and for the evidence she had previously asked for to be taken.

COMPLAINTS

The applicant considers that her arrest and subsequent detention do not comply with Article 5 para. 1 of the Convention because, far from committing offences under Sections VIII and IX of the Introductory Provisions to the Administrative Procedure Acts, she merely asked why the leader of the demonstration was being arrested. She contends that the authorities failed to ask her for her identity on the spot, failed to establish whether there was any reason to think that she would try to evade justice, and failed to caution her before arresting her.

The applicant also alleges a violation of Articles 5 para. 4 and Article 13 of the Convention in that the Constitutional Court dealt with her constitutional complaint in camera, without a hearing, and without listening to the witnesses proffered by her.

Finally, the applicant points out that Article 36 of the Code of Administrative Offences requires a detained person to be released if the reason for detention falls away before the person has been brought to the relevant competent authority, and that the Constitutional Court flew in the face of this provision by finding that there were "no special reasons" to release her.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 January 1990 and registered on 6 April 1990.

On 10 February 1993 the Commission decided to communicate the application to the respondent Government without requesting observations pending the outcome of the proceedings in the case of Chorrherr v. Austria. The European Court of Human Rights gave its judgment in that case on 25 August 1993 (Eur. Court H.R., judgment of 25 August 1993, Series A no. 266-B).

On 18 January 1994 the applicant's representative informed the Commission that the applicant did not wish to pursue her petition.

REASONS FOR THE DECISION

The Commission recalls that it gave notice of the application to the respondent Government and adjourned its consideration of the case pending the outcome of the case of Chorherr v. Austria. Subsequent to the judgment of 25 August 1993 in that case, the applicant's representative on 18 January 1994 informed the Commission that the applicant did not wish to pursue her petition.

The Commission concludes that the requirement of Article 30 para. 1 (a) of the Convention has been satisfied, and further considers that respect for Human Rights as defined in the Convention does not require the continuation of the examination of the case.

For these reasons, the Commission unanimously

DECIDES TO STRIKE THE APPLICATION OUT OF ITS LIST OF CASES.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)