AS TO THE ADMISSIBILITY OF

Application No. 25095/94
by Roland MAYER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 16 January 1996, 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. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
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 25 August 1994 by Roland MAYER against Austria and registered on 8 September 1994 under file No. 25095/94;

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 summarised as follows.

A. The particular circumstances of the case

The applicant, born in 1929, is an Austrian national and resident at Munderfing. In the proceedings before the Commission he is represented by M. P. Lechenauer, a lawyer practising in Salzburg.

On 28 June 1993 the applicant was arrested on the suspicion of having sexually abused a child. On 29 June 1993 he was taken into detention on remand. On 9 July 1993 he was released from detention on remand. On 14 March 1994 the Ried im Innkreis Public Prosecutor's Office (Staatsanwaltschaft) discontinued the criminal proceedings against him.

Subsequently, the applicant filed a request for compensation regarding his detention, referring to S. 2 para. 1 (b) of the Criminal Proceedings (Compensation) Act (Strafrechtliches Entschädigungsgesetz), which concerns cases of acquittal or otherwise discontinuation of criminal proceedings.

On 4 May 1994 the Judges Chamber (Ratskammer) of the Ried im

Innkreis Regional Court dismissed the applicant's claim for compensation regarding the discontinuation of the investigations against him.

In its decision, the Judges Chamber, referring to S. 2 para. 1 (b) of the Criminal Proceedings (Compensation) Act, noted that the applicant had been detained on remand on suspicion of having committed the offence of sexual abuse of minors. The child concerned, when questioned by the police authorities, had made statements accusing the applicant of sexual abuse. When subsequently heard by the Investigating Judge, the child had revoked most of her earlier statements. The mother of the child had made statements incriminating the applicant. According to a psychological expert opinion, the child's statements relating to the applicant's behaviour towards her were not precise enough as to be interpreted, with the certainty necessary for the applicant's conviction, as sexual abuse. The Judges Chamber, in these circumstances, found that the suspicion against the applicant had not been dissipated.

On 6 June 1994 the Linz Court of Appeal (Oberlandesgericht) dismissed the applicant's appeal against the decision of 4 May 1994. The Court of Appeal confirmed that the conditions for compensation under S. 2 para. 1 (b) of the Criminal Proceedings (Compensation) Act were not met. The Court of Appeal noted the charges against the applicant and the course of the investigation proceedings. It considered that the Public Prosecutor's office had discontinued the proceedings against the applicant on the ground that, having regard to the result of the investigations, the evidence against the applicant would not suffice for his conviction at an eventual trial. However, the suspicion against him had not been dissipated as his innocence had not been established in the investigation proceedings. In this respect, the Court of Appeal noted that suspicions regarding changes in the child's behaviour had originally been raised by her teacher. There was nothing to show that the child's statements on the occasion of her initial questioning by the police authorities had resulted from leading questions. Moreover, taken into account the nature of her statements when heard by the Investigating Judge, in particular her refusal to continue talking about the matter, there was no indication that the latter statements were more trustworthy than her earlier statements accusing the applicant of sexual abuse.

B. Relevant domestic law

The Criminal Proceedings (Compensation) Act (Strafrechtliches Entschädigungsgesetz) provides for compensation regarding pecuniary damages resulting from detention on remand. The conditions to be met are laid down in SS. 2 and 3.

S. 2 para. 1 (a) concerns the case of unlawful detention on remand. S. 2 para. 1 (b) lays down as conditions that the accused was acquitted, or that the proceedings against him were otherwise discontinued and the suspicion that he had committed the offence in question did not subsist, or that there was a bar to prosecution which had already existed at the time of his detention.

COMPLAINTS

The applicant complains under Article 6 para. 2 of the Convention about a violation of the presumption of innocence in that, despite the discontinuation of the proceedings against him, the Austrian courts assumed a continuing suspicion against him when rejecting his compensation claims.

THE LAW

The applicant complains under Article 6 para. 2 (Art. 6-2) of the Convention that, despite the discontinuation of the criminal

proceedings against him, his compensation claims in respect of his detention on remand were dismissed on the ground of a continuing suspicion against him.

The Commission notes that on 14 March 1994 the criminal proceedings against the applicant were discontinued, and that he only subsequently filed his request for compensation regarding his detention on remand. However, the Austrian court decisions refusing this request were a direct sequel to the discontinuation of the criminal proceedings against the applicant. Consequently, Article 6 para. 2 (Art. 6-2) may in principle be invoked with regard to the impugned decisions (cf. Eur. Court H.R., Englert judgment of 25 August 1985, Series A no. 123, p. 54, para. 35; Nölkenbockhoff judgment of 25 August 1985, Series A no. 123, p. 79, para. 35).

The Commission recalls that, following the discontinuation of criminal proceedings, only statements which reflect the opinion that the person concerned is guilty, and not statements which merely describe a state of suspicion, infringe the presumption of innocence (cf. Eur. Court H.R., Minelli judgment of 25 March 1983, Series A no. 62, p. 18, para. 37; Lutz judgment of 25 August 1987, Series A no. 123, pp. 24-26, paras. 58-64; Sekanina judgment of 25 August 1993, Series A no. 266, pp. 13-16, paras. 24-30).

In the present case, the Austrian courts concerned dismissed the applicant's compensation claim on the ground that, though the investigations against him had been discontinued, a suspicion persisted. The applicant failed to show that the reasoning of the Austrian courts amounted to any finding of criminal guilt.

The applicant's submissions in this respect do not, therefore, disclose any appearance of a violation of the presumption of innocence within the meaning of Article 6 para. 2 (Art. 6-2) 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)