AS TO THE ADMISSIBILITY OF

Application No. 21345/93
by Albert RASSY
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 2 September 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
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 26 January 1993 by Albert RASSY against Austria and registered on 8 February 1993 under file No. 21345/93;

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 an Austrian citizen, born in 1950 and living in Baden (Austria). Before the Commission, he is represented by Mr. F. Schwank, a lawyer practising in Vienna.

The facts, as they have been submitted by the applicant, may be summarised as follows.

On 26 March 1992 the Vienna Regional Court (Landesgericht) convicted the applicant of professional grave fraud and sentenced him to a three years' prison term.

The Regional Court found that the applicant had fraudulently withdrawn between 28 August 1985 and 9 August 1989 in several instalments the total amount of US-$ 220,500 and AS 4,479,000 from the banking account of Mr. Y. In this respect, the Court had regard to a graphological expert opinion, procured upon the applicant's request, according to which the signatures giving the applicant banking authority had not been done by Mr. Y. and to the statements of several witnesses, including Y. and witnesses on behalf of the applicant. The Court therefore dismissed the applicant's request to examine further witnesses on the question of the applicant's banking authority and his request to order an opinion of a book-keeping expert on the likelihood of other causes for the different value on Y.'s account, such as exchange-rate losses, as irrelevant.

On 4 August 1992 the Supreme Court (Oberster Gerichtshof) dismissed the applicant's plea of nullity (Nichtigkeitsbeschwerde) and referred the applicant's appeal against sentence to the Vienna Court of Appeal (Oberlandesgericht).

The Supreme Court found that the Regional Court based on the evidence taken, in particular the statements of the witnesses and the graphological expert opinion according to which the signature on the banking authority was forged, had convincingly concluded that the applicant had not been authorized to withdraw money from Y.'s bank account. In these circumstances, the Regional Court had rightly refused to take the evidence requested by the applicant, as he had failed to indicate to what extent the requested witnesses could at all make relevant statements on a banking authority given to the applicant which would concern the internal relationship between the applicant and Mr. Y. Furthermore, the Supreme Court found that the requested opinion of the book-keeping expert on possible exchange-rate losses was of no relevance as it could not explain the huge difference between the actual and required value on the account.

On 19 October 1992 the Vienna Court of Appeal partly granted the applicant's appeal and ordered that part of the sentence be imposed on probation.

COMPLAINTS

The applicant complains under Article 6 paras. 1 and 3 (d) of the Convention about the refusal to examine the requested witnesses on his behalf and to order the procurement of the opinion of the book-keeping expert.

THE LAW

The applicant complains under Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) of the Convention about the refusal to examine the witnesses on his behalf and to order the procurement of the opinion of the book-keeping expert.

The Commission recalls that Article 6 para. 3 (d) (Art. 6-3-d) of the Convention does not give an absolute right to the examination of every witness proposed by the defence (Eur. Court H.R., Engel and others judgment of 6 June 1976, Series A no. 22, p. 38, para. 91; Bricmont judgment of 7 July 1989, Series A no. 158, p. 31, para. 89). In particular a court is justified in refusing to summon witnesses when it considers that their statements could not be of any relevance to the case (No. 10486/83, Dec. 9.10.86, D.R. 49, p. 86).

In the present case, the Austrian courts dismissed the applicant's requests to take further evidence on the grounds that he had failed to show conclusively that the witnesses named by him could give any relevant information for the proceedings at issue. Moreover, they found that exchange-rate losses could not have caused the important difference between the actual and required value on Y.'s account and that, thus, the opinion of a book-keeping expert was unlikely to provide any further relevant information.

In these circumstances, the Commission finds no indication that the Austrian courts failed to consider relevant evidence or acted in an arbitrary and unfair manner.

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)	(A. WEITZEL)