AS TO THE ADMISSIBILITY OF

Application No. 24429/94
by Saso REBRICA
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 9 June 1994 by Saso REBRICA against Austria and registered on 17 June 1994 under file No. 24429/94;

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 1970, is a Slovenian national and resident in Gorna Radgona, Slovenia. In the proceedings before the Commission he is represented by MM. W. Thurner, P. Schaden and W. Vacarescu, lawyers practising in Graz.

On 24 September 1992 the applicant and a second person entered Austria by car at the Slovenian/Austrian border. Upon the customs inspection, the Austrian customs authorities discovered that their car had been stolen in Germany and that firearms were hidden underneath the back seat. Both the applicant and the second person were arrested and criminal proceedings were instituted against them on the suspicion of grave theft and of offences under the War Equipment Act (Kriegsmaterialiengesetz). On 26 September 1992 they were taken into detention on remand.

On 23 October 1992 the applicant requested that he be released from detention on remand. He repeated his earlier statements that he had only been co-driver in the car and not been involved in the

offences concerned. On 11 November 1992 the Graz Regional Court (Landesgericht) ordered the applicant's release. The Public Prosecutor's Office (Staatsanwaltschaft) lodged an appeal. However, on 13 November 1992, following information by the German prosecution authorities that no request for the applicant's extradition would be lodged, the appeal was withdrawn and the applicant released. The proceedings were discontinued on 20 January 1993.

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 7 April 1993 the Judges Chamber (Ratskammer) of the Vienna Regional Court dismissed the applicant's claim for compensation regarding the discontinuation of the investigations against him.

In its decision, the Judges Chamber noted the background and the course of the criminal proceedings against the applicant. Referring to S. 2 para. 1 (b) of the Criminal Proceedings (Compensation) Act, it observed that, following discontinuation of criminal proceedings, a suspect could only request compensation for his detention on remand if the suspicion of his having committed the offence in question had been dissipated. The Judges Chamber considered that, in the circumstances of the applicant's arrest in a stolen car with firearms hidden inside, there had been a strong suspicion (erheblicher Tatverdacht) that the two suspects had collaborated. This suspicion had subsequently not been confirmed with the certainty necessary for the applicant's conviction, but had however not been dissipated. There were no other circumstances justifying his compensation claim.

On 30 December 1993 the Graz Court of Appeal (Oberlandesgericht) dismissed the applicant's appeal against the decision of 7 April 1993. 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 that the applicant had been co-driver in a stolen car on the occasion of transport of firearms. The applicant's defence that he had merely been invited to a drive to Germany had not been confirmed by the second suspect who had indicated a destination in Austria. Moreover, firearms had been found underneath the applicant's seat and in the side partition of the door on his side. Finally, in the course of a search of his house in Slovenia, blank school diplomas had been found. Having regard to all circumstances, there was nothing to show that the applicant had been acting in good faith. His release from detention on remand had been ordered on the ground that the strong suspicion of his having committed the offences concerned had ceased to exist. The Court of Appeal, referring to the above statements, further observed that the applicant's detention on remand had not been unlawful. The decision was served on 10 January 1994.

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 20 January 1993 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)