CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 67175/01
by Karl REINPRECHT
against Austria

The European Court of Human Rights (Fourth Section), sitting on 12 October 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs E. STEINER,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 25 August 2000,

Having regard to the partial decision of 8 April 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Karl Reinprecht, is an Austrian national who was born in 1966 and lives in Graz. He was represented before the Court by Mrs C. Lanschützer, a lawyer practising in Graz. The respondent Government were represented by their Agent, Ambassador H. Winkler,

Head of the International Law Department at the Federal Ministry for Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

On 6 May 2000 the Graz Regional Criminal Court (*Landesgericht für Strafsachen*) ordered the applicant's pre-trial detention on suspicion of attempted sexual coercion (*geschlechtliche Nötigung*). The court based the suspicion against the applicant on the statement of the victim who had identified the applicant at an identification parade. Further, it considered that, given the applicant's criminal record, there was a risk that he might commit an offence similar to the one he was suspected of (*Tatbegehungsgefahr)*.

On 19 May 2000 the Graz Regional Court, after a hearing held in the presence of the Public Prosecutor, the applicant and his defence counsel, ordered that the applicant's pre-trial detention should continue. Referring to the testimony of the victim, it found that there was a reasonable suspicion against the applicant. Further, there was a risk that he might commit an offence similar to the one he was suspected of. The court stated that the applicant had nine previous convictions, mainly concerning offences against property but recently also concerning violent crimes. The court found that, in the light of the applicant's recidivism and his character, the prolongation of his pre-trial detention was reasonable. The applicant appealed against this decision.

On 7 June 2000 the Graz Court of Appeal (*Oberlandesgericht*), sitting in camera, dismissed the appeal and confirmed the Regional Court's decision.

On 19 July 2000 the Graz Regional Court, after having held a hearing in the presence of the parties, dismissed a request the applicant's release and ordered the continuation of his pre-trial detention. The applicant filed an appeal against this decision.

On 20 July 2000 the applicant filed another request for release. He stressed that there were no reasons to maintain his pre-trial detention.

On 26 July 2000 the Public Prosecutor's Office (*Staatsanwaltschaft*) filed the bill of indictment. The applicant appealed against it.

On 2 August 2000 the Graz Regional Court, having held a hearing in the presence of the parties, ordered that the applicant's pre-trial detention should continue.

On 7 August 2000 the applicant appealed against this decision. He submitted that there was no reasonable suspicion against him as the testimony of the only witness for the prosecution had been contradictory.

On 17 August 2000 the Graz Court of Appeal, sitting in camera, dismissed the applicant's appeal against the bill of indictment and the

appeals against the Regional Court's decisions of 19 July 2000 and 2 August 2000. It found that there was no doubt about the credibility of the witness and that there was therefore a reasonable suspicion against the applicant. Further, it confirmed the Regional Court's repeated finding that reasons for detention on remand (*Haftgründe*) existed.

On 18 September 2000 the applicant lodged a fundamental rights complaint (*Grundrechtsbeschwerde*) with the Supreme Court (*Oberster Gerichtshof*) against this decision. He submitted that there was no strong suspicion against him and that there were no reasons to maintain the detention on remand.

On 16 October 2000 the Supreme Court, sitting in camera, dismissed the complaint and found that there was no doubt about the credibility of the witness and that reasons for the applicant's detention on remand subsisted.

On 24 October 2000 the Regional Court, sitting with two professional and two lay judges, held a public hearing, convicted the applicant of attempted sexual coercion and sentenced him to two years' imprisonment.

On 8 March 2001 the Supreme Court rejected the applicant's plea of nullity.

On 8 May 2001 the Court of Appeal dismissed the applicant's appeal but allowed the Public Prosecutor's appeal and increased the term of imprisonment to two years and six months.

B. Relevant domestic law

Article 182 of the Code of Criminal Procedure (*Strafprozeßordnung*), in so far as relevant, provides as follows:

> "1. The investigating judge shall conduct the hearing on the detention; it is not open to the public. The accused, his counsel, the Public Prosecutor and the probation officer shall be informed of the date of the hearing.
>
> 2. The accused shall be brought before the judge at the hearing, unless this is impossible because of illness. He shall be represented by counsel. ..."

The Court of Appeal, when dealing with appeals against decisions of the investigating judge concerning pre-trial detention, takes its decision sitting in private pursuant to Article 114 of the Code of Criminal Procedure.

COMPLAINT

The applicant's remaining complaint is that the hearings concerning the continuation of his pre-trial detention were not public. He relied on Article 6 § 1 of the Convention.

THE LAW

The applicant complained under Article 6 § 1 of the Convention about the lack of a public hearing as regards the continuation of his pre-trial detention.

The Court considers that this complaint also raises an issue under Article 5 § 4, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Article 6 § 1, in so far as material, reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

The Government asserted that the proceedings fell within the scope of Article 5 § 4 of the Convention. That provision required proceedings concerning the review of the lawfulness of detention to be adversarial and to respect the principle of equality of arms. These requirements had been complied with in the present case. However, Article 5 § 4, unlike Article 6 § 1, did not require hearings to be public. This was justified by the different aims pursued by these provisions. While the publicity requirement of Article 6 § 1 served to protect litigants against the administration of justice in secret and to maintain confidence in the courts, Article 5 § 4 aimed in particular at protecting the individual against arbitrary deprivation of liberty by giving him access to a speedy review of the lawfulness of his detention.

Moreover, the Government contested the applicability of Article 6 § 1 to proceedings concerning the review of the lawfulness of pre-trial detention. They argued that the present case had to be distinguished from *Aerts v. Belgium* (judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V) in that the present proceedings exclusively concerned the lawfulness of the applicant's detention and did not involve any claim for damages. Thus, Article 6 did not apply under its civil head. It did not apply under its criminal head either. At that stage of the proceedings, all the courts had to assess was whether there was sufficient suspicion against the applicant and further reasons to justify his pre-trial detention, while the "criminal charge" against him was only determined at the trial, which complied with the publicity requirement.

The applicant contested the Government's view. He asserted that, whether examined under Article 5 § 4 or under Article 6 § 1, there was no

valid reason why hearings concerning the lawfulness of pre-trial detention should not be open to the public.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, including the question as to the applicability of Article 6, determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the remainder of the application admissible, without prejudging the merits of the case.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President