AS TO THE ADMISSIBILITY OF

Application No. 15062/89
by Erwin and Robert SCHIANSKY
against Austria

The European Commission of Human Rights sitting in private on 7 May 1990, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 2 May 1989 by Erwin and Robert SCHIANSKY against Austria and registered on 29 May 1989 under file No. 15062/89;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The first applicant, Erwin Schiansky, is an Austrian citizen born in 1952. He lives in Vienna and is a sound technician. The second applicant, his brother Robert Schiansky, is also an Austrian citizen. He was born in 1954, also lives in Vienna and is a judge. The facts of the application, as submitted by the applicants, may be summarised as follows:

In early 1985, the first applicant bought sound studio equipment at the Frankfurt Music Fair. The equipment was allegedly stolen on 20 February 1985. The vendor had disappeared, and attempts to trace him failed. The insurance company, after initially refusing to cover the loss, finally paid the then value of the equipment and the first applicant re-equipped his studio.

On 6 June 1986 the applicants were questioned at a police station and arrested. They were released on 20 August 1986. The applicants were charged with fraud, and their trial took place between 18 and 22 April 1988 and on 16 May 1988 at the Korneuburg Regional Court (Kreisgericht). The applicants were acquitted.

The Public Prosecutor appealed by a way of a plea of nullity

of 31 October 1988. The first applicant's reply was dated 11 November 1988. The second applicant's reply was dated 25 November 1988. On 17 June 1989 the Supreme Court (Oberster Gerichtshof) set aside the acquittal and remitted the case to the Steyr Regional Court, where the first instance proceedings are still pending.

COMPLAINTS

The applicants complain that, as a result of media and political pressure, the Public Prosecutor raised a plea of nullity which contradicted the applicants' presumption of innocence. The applicants further complain that the remittal of the case for a second trial to the Steyr Regional Court, some 200 km from the applicants' home, has caused difficulties with representation and with preparation of the case; that the instructions given by the Supreme Court for the future handling of the case interfered with the Steyr Court's independence, and violated the presumption of innocence. The applicants also complain that the proceedings have taken too long.

The applicants allege violations of Article 6 of the Convention.

THE LAW

1. The applicants allege a violation of Article 6 (Art. 6) of the Convention in respect of the length of the proceedings for fraud. Article 6 para. 1 (Art. 6-1) of the Convention provides, so far as relevant, as follows:

"1. 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 within a reasonable time by an independent and impartial tribunal established by law..."

The Commission notes that the alleged theft took place in February 1985, and that the applicants were arrested in June 1986. The second trial is still pending at first instance before the Steyr Regional Court. The Commission considers that it cannot, on the basis of the file, determine whether there has been a violation of Article 6 (Art. 6), as regards the length of the proceedings, without the observations of both parties.

The Commission therefore adjourns this part of the application.

2. The applicants also allege violations of Article 6 (Art. 6) of the Convention in various other respects concerning the proceedings which are still pending.

The Commission recalls that it can only assess the fairness of criminal proceedings when it is able to consider the whole of the proceedings (cf. No. 9000/80, Dec. 11.3.82, D.R. 28 p. 127, with further references). Moreover, an acquittal will normally be regarded as rectifying procedural errors alleged to have violated the Convention (cf. No. 5572/72, Dec. 8.7.73, D.R. 1 p. 44 ; No. 8083/77, Dec. 13.3.80, D.R. 14 p. 223). Until the proceedings against the applicants have finished, it is not possible to consider whether Article 6 (Art. 6) has been complied with in this respect, or whether any alleged violations that may have taken place have been remedied by a second acquittal.

These complaints are therefore premature and must be rejected as manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECIDES TO ADJOURN its examination of the complaint as to the length of proceedings

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)