AS TO THE ADMISSIBILITY OF

Application No. 32451/96
by Vilborg SIGURÐARDÓTTIR
against Iceland

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, 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 15 May 1996 by Vilborg SIGURÐARDÓTTIR against Iceland and registered on 30 July 1996 under file No. 32451/96;

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 Icelandic citizen, born in 1963 and resident in Seltjarnarnes. Before the Commission she is represented by Mr Jón Steinar Gunnlaugsson, a lawyer practising in Reykjavík.

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

At the end of April 1989 the police in Reykjavík commenced investigation of a drug case relating to importation and distribution of almost one kilo of cocaine, which apparently had been transported to Iceland at the end of October or beginning of November 1988. A large number of people were interrogated in the course of the investigations.

On 11 May 1989 the applicant and her co-habitant, P, were arrested. P was one of the principal suspects of the alleged drug offences. P was kept in custody but the applicant was released during the following night.

On 17 May 1989 the applicant was interrogated as a suspect. It was deemed that the applicant had known about the importation and distribution of the drugs and she was suspected of criminal involvement. She denied having any knowledge of the alleged drug offences.

On 2 June 1989 the applicant was again interrogated and, following the interrogation, arrested without a court order.

On 3 June 1989 the applicant was brought before the Criminal Court for Drug Cases (sakadóms i ávana- og fíkniefnamálum) which issued an order remanding her in custody until 16 June 1989. The Criminal Court found the applicant to be reasonably suspected of criminal conduct even though this was objected to by the applicant.

On 16 June 1989 the Criminal Court for Drug Cases issued a new order extending the applicant's custody on remand until 12 July 1989.

The applicant referred the extension order of 16 June 1989 to the Supreme Court (Hæstirèttur Íslands) which affirmed the order on 23 June 1989.

On 5 July 1989 the applicant was released from custody.

On 30 October 1989 the public prosecutor issued an indictment against the applicant even though the indictment was not served on her. The indictment read, as far as relevant, as follows:

(Translation)

"having on October 1988, in Reykjavík, delivered to her co-habitant [P] ... USD 666 for purchase of cocaine, while having for some time been aware that the said [P] and others, were preparing to send [a third person] to the United States to purchase substantial amounts of cocaine and to import the substance to Iceland for financial gain; [the applicant] knowing that this money which she owned would be used for the purchase. [The applicant] was aware that in late November 970 grammes of cocaine were imported in accordance with these plans and that shortly thereafter sale of the substance commenced; and [the applicant] was also aware that funds available to herself and [P] in December 1988 and early 1989 had been acquired by sale of the substance. [The applicant] is furthermore charged with having in the period in question used cocaine a few times in Reykjavík."

On 9 December 1992 the case against the applicant was filed in the Reykjavík District Court (Héraðsdòmur Reykjavíkur) after the applicant herself had taken the initiative to have the action filed in court.

On 18 January 1993 the District Court acquitted the applicant of all the charges. There was no appeal from this judgment.

On 29 June 1993 the applicant instituted civil proceedings against the Icelandic Government, requesting to be awarded damages for unlawful and unnecessary arrest and for unlawful and/or unnecessary detention on remand. The claim was denied by the Government.

On 30 June 1994 the Reykjavík District Court rejected all the applicant's claims. The applicant appealed to the Supreme Court.

On 30 November 1990 the Supreme Court upheld the District Court's judgment while giving the following reasons:

(Translation)

" As stated in the judgment appealed from, two charges were brought in the indictment against [the applicant]: having supplied money for purchase of cocaine, and having used cocaine. The condition set in the final provision of Section 150 (2) of Act No. 74/1974 that the applicant is deemed more likely to be innocent than guilty. As regards the first charge, i.e. supply of money for purchase of cocaine, it is not contested that [the applicant] delivered to the man she lived with the said USD 666 in the morning of 12 October 1988, and that he handed them over to another person who was going to the United States the same day to buy cocaine. Witnesses have testified that [the applicant] was present when the money was delivered, and that they knew what it was to be used for. The question remains, then, whether [the applicant] has established that she is likely not to have known for what purpose the money was to be used. It cannot be seen from the facts of the case and the statements described in the Reykjavík District Court's

judgment of 5 June 1990 (public prosecutor v. [P]) that she is more likely to be innocent than guilty of this conduct. [The applicant] confessed to the use of cocaine and to having provided cocaine to others, and already for that reason she does not fulfil the requirements of Section 150 (2) of the above-mentioned Act as regards that conduct. This renders unnecessary an examination of the requirements of Section 150 (1) and a consideration of [the applicant's] statements in view of those requirements. The judgment appealed from is therefore to be sustained."

The provisions of Section 150 of Act No. 74/1974 ("Indemnification to Accused Persons, et al") read as follows:

(Translation)

"Section 150.

In the absence of specific provisions to the contrary a request for indemnification according to this Chapter may only be granted if:

1. the accused did not, by his intentional or grossly negligent unlawful conduct, cause the measures on which he bases his claim to be taken, for example by absconding, by presenting false information, by otherwise attempting to hinder the progress of the investigation, etc., and

2. investigation was discontinued or an indictement not issued because the conduct of which he was accused was not deemed to be criminal, a proof of it could not be obtained, or he had been found not guilty by a judgment from which an appeal did not take place or could not have taken place, and provided he is deemed more likely to be innocent than guilty of that conduct."

COMPLAINTS

1. The applicant complains under Article 5 para. 5 of the Convention that she was not entitled to compensation even though her arrest and detention on remand were allegedly contrary to Article 5 para. 1(c) of the Convention since they were not based on reasonable suspicion.

2. The applicant also complains under Article 6 para. 2 of the Convention that she was not presumed innocent by the Supreme Court as her compensation claim was rejected on the grounds that "she was not deemed more likely to be innocent than guilty of the conduct with which she was charged".

THE LAW

1. In respect of the proceedings concerning her request for compensation the applicant alleges a violation of Article 5 paras. 1(c) and 5 of the Convention, which read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably concerned necessary to prevent his committing an offence or fleeing after having done so;

...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Commission recalls that the right to compensation under Article 5 para. 5 of the Convention presupposes that a violation of one of the other paragraphs of Article 5 has been established, either by a domestic organ or by the Convention organs (cf. No. 10801/84, Rep. 03.10.88, D.R. 61, p. 62).

Insofar as the applicant has alleged a violation of Article 5 para. 1(c) before the Icelandic courts, the Commission observes that it does not appear that a breach of Article 5 para. 1 has been established by these courts.

Noting that the present application was introduced more than six months after the applicant's release from detention on remand on 5 July 1989, the Commission considers that pursuant to Article 26 of the Convention it is not required to examine the alleged incompatibility of the detention on remand with Article 5 para. 1 of the Convention.

It follows that the complaint under Article 5 para. 1 has been introduced out of time and must be rejected under Article 27 para. 3 of the Convention.

Furthermore, in the absence of a finding of an alleged breach of Article 5 para. 1 of the Convention, it cannot be said that the applicant was entitled to compensation under Article 5 para. 5 of the Convention.

Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant also complains under Article 6 para. 2 of the Convention that she was not presumed innocent by the Supreme Court. In this respect the Commission considers that it is not sufficiently informed to decide on the admissibility of this complaint and finds it necessary first to obtain written observations from the parties.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaint that she was not presumed innocent by the Supreme Court;

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER Secretary to the Second Chamber	J.-C. GEUS President of the Second Chamber