AS TO THE ADMISSIBILITY OF

Application No. 27891/95
by György SZILÁGYI
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 10 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 12 December 1994 by György SZILÁGYI against Hungary and registered on 19 July 1995 under file No. 27891/95;

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, born in 1952, is a Hungarian national. He is currently detained on remand in a prison in Debrecen, Hungary. He is a businessman. Before the Commission he is represented by Mr. P. Antal, a lawyer practising in Debrecen.

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

On 15 May 1994 the Hajdú-Bihar County Police Department (Hajdú-Bihar Megyei Rendorfokapitányság Bunügyi Igazgatóság Vizsgálati Osztálya) arrested the applicant on the strong suspicion (alapos gyanú) of his having kidnapped three Austrian citizens, within the meaning of Section 175/A of the Hungarian Criminal Code (a Bünteto Törvénykönyvrol szóló 1978. évi IV. törvény). Upon his arrest, the Police Department relied on S. 91 (1b) of the Hungarian Code of Criminal Procedure (a bünteto eljárásról szóló 1973. évi I. törvény), which provides that a defendant can be arrested, if the circumstances of the case warrant his detention on remand.

Still on 15 May 1994 applicant was heard by the police as a suspect of kidnapping (emberrablás).

On 17 May 1994 the Hajdú-Bihar County Public Prosecutor's Office (Hajdú-Bihar Megyei Foügyészség) dismissed the applicant's complaint against his arrest.

Also on 17 May 1994 the Debrecen District Court (Debreceni Városi Bíróság) held a hearing and, upon the proposal of the Hajdú-Bihar County Public Prosecutor's Office, ordered the applicant's detention on remand. The District Court, having regard to the then results of the police investigation and to the applicant's statements made at the hearing, found that there was a strong suspicion that he had been involved in the kidnapping of three Austrian citizens. The District Court held that further investigation was necessary in the case in order to produce more evidence. Moreover, the District Court held that, in the light of the seriousness of the charges, there was a well-founded concern that the applicant would hide from the authorities, abscond, or would commit a further crime, if left at large. The District Court also took note of the fact that, at the same time, further sets of criminal proceedings were conducted against him. The District Court referred to S. 92 (1a) and (1c) of the Code of Criminal Procedure as the legal basis for the decision.

According to S. 92 of the Criminal Procedure, a defendant can be detained on remand, if there is a danger of his absconding, collusion or repetition of crime, if left at large.

On 13 June 1994 the District Court prolonged the detention on remand until 17 August 1994. On 5 July 1994, upon the applicant's appeal, the Hajdú-Bihar County Regional Court (Hajdú-Bihar Megyei Bíróság) upheld this decision.

On 11 August 1994 a single judge at the Hajdú-Bihar Regional Court prolonged the applicant's detention on remand until 17 November 1994. On 23 August 1994, upon the applicant's appeal, the Regional Court, sitting as a panel, upheld this decision.

On 7 October 1994 the Hajdú-Bihar County Public Prosecutor's Office dismissed the applicant's complaint that the police authorities failed to further the investigations. The Prosecutor's Office recalled that in June and July 1994 several actions of investigation had been taken by the police, including a hearing of the applicant on 18 July, hearings of the victims, inspection of the premises and contacting the INTERPOL.

On 15 November 1994 a single judge at the Hajdú-Bihar County Regional Court prolonged the applicant's detention on remand until 17 April 1995. The Regional Court found that, in addition to the reasons earlier considered by the courts, there was also a danger of the applicant's collusion, since he had smuggled a mobile phone into his prison ward. The Regional Court also held that, since the investigation warranted contacts with international criminal information centres, the then length of the detention on remand was not unreasonable. The Regional Court relied on SS. 92 (1a), (1b) and (1c) and 95 of the Code of Criminal Procedure. On 30 November 1994, upon the applicant's appeal, the Regional Court, sitting as a panel, upheld this decision.

On 21 October 1994 and on 20 February 1995 the Debrecen District Court, without taking a formal decision, dismissed the applicant's repeated requests for release on the ground that they contained no new relevant information. The District Court relied on S. 95 (4) of the Code of Criminal Procedure, which provides that a repeated request for release, containing no new relevant information, does not warrant a formal court decision.

On 2 March 1995 the applicant's lawyer lodged a complaint with the Hajdú-Bihar County Police Department about the alleged inefficiency and the length of the investigation.

On 16 March 1995 the District Court dismissed the applicant's repeated request for release. On 30 March 1995 the Regional Court dismissed his appeal.

On 23 March 1995 the police informed the applicant that, in the context of the same crime, he was suspected of having committed severe theft (kifosztás) and a violation of one's personal liberty (személyi szabadság megsértése). On 31 March 1995 the Hajdú-Bihar County Public Prosecutor's Office dismissed his complaint.

On 13 April 1995 the Supreme Court (Legfelsobb Bíróság) prolonged the applicant's detention on remand until 17 August 1995.

On 3 May 1995 the applicant's lawyer unsuccessfully requested the applicant's release from the Hajdú-Bihar County Regional Court.

On 5 May 1995 the Military Panel of the Hajdú-Bihar County Regional Court (Hajdú-Bihar Megyei Bíróság Katonai Tanácsa), in a separate set of proceedings, finally convicted the applicant of corruption and sentenced him to five months' imprisonment. Between 1 June and 31 October 1995 the applicant served this sentence.

Meanwhile the applicant's lawyer had lodged a complaint with the Investigation Supervisory Department of the Attorney General's Office (Legfobb Ügyészség Nyomozás Felügyeleti Foosztálya), which, on 30 May 1995, forwarded the complaint to the Hajdú-Bihar County Public Prosecutor's Office.

On 1 August 1995 the Hajdú-Bihar County Public Prosecutor's Office preferred a bill of indictment against the applicant. The applicant, along with five further co-accused, was charged with having been an accomplice to two counts of kidnapping (emberrablás) and to violating somebody's personal liberty (személyi szabadság megsértése); moreover with having been an instigator to one count of severe bodily assault and an accomplice to two counts of severe bodily assault (súlyos testi sértés) as well as an instigator to two counts of abuse of official documents (közokirattal visszaélés); furthermore, with having committed severe theft (kifosztás). The Public Prosecutor's Office recalled that measures had been taken to obtain information about two further sets of criminal proceedings conducted against the applicant in Austria. The Public Prosecutor's Office proposed that the trial court hear two experts and twenty-two witnesses in the case. The Public Prosecutor's Office also proposed that the trial court resume the applicant's detention on remand, as from the completion of his prison sentence on 31 October 1995, pursuant to Section 95 (2) of the Code of Criminal Procedure. Section 95 (2) provides that the detention on remand, ordered or maintained by the first instance trial court subsequent to the filing of the bill of indictment, lasts until the announcement of the first instance judgment on the merits. As from 1 November 1995, the applicant's detention on remand was resumed accordingly.

Between 27 November 1995 and 24 June 1996 the Hajdú-Bihar County Regional Court held thirty-two trial sessions.

On 2 July 1996 the Regional Court convicted the applicant of having been an accomplice to three counts of kidnapping, an accomplice to two counts of and an instigator to one count of severe bodily assault, moreover of having committed two counts of abuse of official documents. The Regional Court sentenced the applicant to six years' imprisonment and ordered that his pre-trial detention between 15 May 1994 and 31 May 1995, moreover, between 1 November 1995 and 2 July 1996 be credited against the duration of this sentence. The Regional Court acquitted the applicant of one count of severe theft (kifosztás) and of two counts of instigation to severe theft.

In his submissions of 26 August 1996 the applicant's lawyer states that the applicant's appeal against the first instance decision is pending before the Supreme Court.

COMPLAINTS

1. The applicant complains under Article 5 para. 4 and Article 13 of the Convention that his detention on remand was arbitrary and lasted unreasonably long.

2. The applicant further complains under Article 6 paras. 1 and 2 that the manner of taking evidence during the investigation was unfair in general in that the authorities ignored any evidence in his defence.

3. The applicant submits under Article 8 that his correspondence, while detained on remand, was delayed by the authorities and that his concubine, a Romanian citizen, was denied a residence permit in Hungary, allegedly with regard to the criminal proceedings conducted against him.

THE LAW

1. The applicant complains that his detention on remand was arbitrary.

The Commission considers that this complaint falls to be examined under Article 5 para. 1 (Art. 5-1) of the Convention, which, in so far as relevant, provides 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 considered necessary to prevent his committing an offence or fleeing after having done so;"

The Commission has examined whether the applicant's detention on remand was "in accordance with a procedure prescribed by law" and "lawful" within the meaning of Article 5 para. 1 (Art. 5-1). In this respect the Commission recalls that the Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof; but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 (Art. 5), namely, to protect individuals from arbitrariness. Moreover, it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 para. 1 (Art. 5-1) failure to comply with domestic law entails a breach of the Convention, it follows that the Convention organs can and should exercise a certain power to review whether this law has been complied with (Eur. Court HR, Scott v. Spain judgment of 18 December 1996, to be published in Reports of Judgments and Decisions 1996, paras. 56-57).

The Commission notes that on 17 May 1994 the Debrecen District Court held a hearing and, upon the proposal of the Hajdú-Bihar County Public Prosecutor's Office, ordered the applicant's detention on remand. The District Court, having regard to the then results of the police investigation and to the applicant's statements made at the hearing, found that there was a strong suspicion that the applicant had been involved in the kidnapping of three Austrian citizens. The District Court held that further investigation was necessary in the case in order to produce more evidence. Moreover, the District Court held that, in the light of the seriousness of the charges, there was

a well-founded concern that the applicant would hide from the authorities, abscond, or would commit a further crime, if left at large. The District Court also took note of the fact that, at the same time, further sets of criminal proceedings were conducted against the applicant. The District Court referred to S. 92 (1a) and (1c) of the Code of Criminal Procedure as the legal basis for the decision.

Moreover, the domestic courts, when extending the applicant's detention on remand and dismissing his requests for release, referred in essence to the original detention order and stated that the reasons set out in it were still persistent. On 15 November 1994 the Hajdú-Bihar County Regional Court, in its prolongation order, found that, in addition to the reasons earlier considered by the courts, there was also a danger of the applicant's collusion, since he had previously smuggled a mobile phone into his prison ward.

Furthermore, the Commission notes that there is nothing to show that the domestic court decisions ordering and prolonging the applicant's detention were not in compliance with the relevant procedural provisions of Hungarian law.

In these circumstances, the Commission finds that the applicant's submissions do not disclose any appearance that his detention on remand was contrary to Article 5 para. 1 (Art. 5-1) of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains that his detention remand lasted unreasonably long.

The Commission considers that this complaint falls to be examined under Article 5 para. 3 (Art. 5-3) of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The Commission recalls that whether a period of pre-trial detention can be considered "reasonable" must be assessed in each case according to its special features (cf., Eur. Court HR, Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, p. 24, para. 10). Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. It falls in the first place to the national judicial authorities to examine all the circumstances arguing for or against the existence of such a requirement and to set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the facts stated by the applicant in his appeals that the Convention organs are called upon to decide whether or not there has been a violation of Article 5 para. 3 (Art. 5-3) of the Convention (Eur. Court HR, Scott v. Spain judgment of 18 December 1996, to be published in Reports of Judgments and Decisions 1996, para. 74).

The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices: the Convention organs must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were

"relevant" and "sufficient", the Convention organs must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (cf., Eur. Court HR, Toth v. Austria judgment of 12 December 1991, Series A no. 224, p. 18, para. 67; Van der Tang v. Spain judgment of 13 July 1995, Series A no. 321, pp. 17-18, para. 55).

The Commission notes that the applicant was detained on remand from 17 May 1994 until 31 May 1995. Between 1 June 1995 and 31 October 1995 he served a prison sentence. He was again detained on remand from 1 November 1995 until 2 July 1996, when the Regional Court passed its sentence. Thus his detention on remand lasted altogether twenty and a half months.

As to the complexity of the case, the Commission notes that the applicant - in the relevant period being defendant in several simultaneous sets of criminal proceedings in Hungary and in Austria - was tried, along with five further co-accused, for having committed several offences in the context of kidnapping three Austrian citizens. In particular, on 17 May 1994 the Debrecen District Court found that there was a strong suspicion that the applicant had kidnapped the Austrian citizens in question. Moreover, on 23 March 1995 the police suspected him of having committed severe theft and a violation of one's personal liberty. Furthermore, in the bill of indictment, he was charged with having been an accomplice to two counts of kidnapping and to violating somebody's personal liberty, an instigator to one count of severe bodily assault and an accomplice to two counts of severe bodily assault, an instigator to two counts of abuse of official documents and with having committed severe theft. The establishment of the facts warranted, inter alia, summoning the victims from abroad, hearing two experts and numerous witnesses, moreover, contacts with international criminal information centres including the INTERPOL.

As to the conduct of the authorities, the Commission notes that on 7 October 1994 the Hajdú-Bihar County Public Prosecutor's Office dismissed the applicant's complaint that the police authorities had failed to further the investigations. The Prosecutor's Office recalled that in June and July 1994 several actions of investigation had been taken by the police, including a hearing of the applicant on 18 July, hearings of the victims, inspection of the premises and contacting the INTERPOL. Moreover, on 15 November 1994 the Hajdú-Bihar County Regional Court, while prolonging the applicant's detention on remand, held that, since the investigation warranted contacts with international criminal information centres, the then length of the detention on remand was not unreasonable. Furthermore, in the bill of indictment of 1 August 1995 the Hajdú-Bihar County Public Prosecutor's Office recalled that measures had been taken to obtain information about two further sets of criminal proceedings conducted against the applicant in Austria.

The Commission also notes that between 27 November 1995 and 24 June 1996 the Hajdú-Bihar County Regional Court held thirty-two trial sessions in the case and, on 2 July 1996, convicted the applicant of having been an accomplice to three counts of kidnapping, an accomplice to two counts of and an instigator to one count of severe bodily assault, moreover of having committed two counts of abuse of official documents. The Regional Court sentenced the applicant to six years' imprisonment.

In these circumstances the Commission, having regard to the serious nature of the charges against the applicant, the complexity and the international crime implications of the case, moreover, to the extensive series of court hearings and the applicant's eventual conviction, considers that the total length of the applicant's detention remand can be regarded as justified for the purposes of

Article 5 para. 3 (Art. 5-3) of the Convention.

It follows that this part of the application is likewise manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant further complains under Article 6 paras. 1 and 2 (Art. 6-1, 6-2) that the manner of taking evidence during the investigation was unfair in general in that the authorities ignored any evidence in his defence.

The Commission notes that the applicant's appeal is still pending before the Supreme Court and recalls that, in principle, it can only assess the fairness of criminal proceedings when it is able to consider them in their entirety (cf., No. 9000/80, Dec. 11.3.82, D.R. 28, p. 127). In the present case, the Commission considers that, until the relevant proceedings have finished, the applicant's complaint as to the fairness of proceedings is premature. It follows that this part of the application is likewise manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant also complains under Article 8 (Art. 8) that his correspondence, while detained on remand, was delayed by the authorities and that his concubine, a Romanian citizen, was denied a residence permit in Hungary, allegedly with regard to the criminal proceedings conducted against him. However, the Commission finds that the applicant's submissions do not disclose any appearance of a violation of his rights under Article 8 (Art. 8) of the Convention. It follows that this part of the application is likewise manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber