SUR LA RECEVABILITÉ

Application No. 25916/94
by Nancy Marlene VASQUEZ MARTINEZ
against Spain

The European Commission of Human Rights (Second Chamber) sitting in private on 17 May 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

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 28 November 1994 by Nancy Marlene VASQUEZ MARTINEZ against Spain and registered on 12 December 1994 under file No. 25916/94;

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

a. Particular circumstances of the case

The applicant is a Colombian citizen, born in 1952 and resident in Honduras. She is represented before the Commission by Mr. Iruzubieta Fernandez, a lawyer practising in Madrid (Spain).

The facts as submitted by the applicant may be summarised as follows :

In 1992, criminal proceedings were instituted against the applicant by the central investigating Court of Madrid (Juzgado Central de Instrucción). On 24 March 1993, the court ordered the detention of the applicant and, for that purpose, issued a warrant to bring the applicant before the court.

Informed of the proceedings against her, the applicant did not appear in person before the court but submitted a memorial signed by her lawyer (abogado) and solicitor (procurador). On 24 May 1993, the court refused the applicant the right to be represented on the ground that she had not personally appeared in court. The applicant's counsel lodged an appeal (recurso de reforma) before the same court, which was rejected by order of 30 June 1993. An appeal was lodged to the Criminal Chamber of the Audiencia Nacional, which was rejected by judgment of 23 February 1994, on the ground that the appearance in

person of the defendant before the investigating judge was necessary for the exercise of the rights of the defence.

Furthermore, by decision of 9 September 1993, the investigating judge suspended the proceedings (archivo provisional de las actuaciones).

The applicant lodged an amparo appeal before the Spanish Constitutional Court on the ground of Article 24 of the Constitution (right to a fair trial). By decision on 6 June 1994, notified on 15 June 1994, the Constitutional Court dismissed the amparo appeal. The court stated that the requirement of the defendant's personal appearance did not infringe the rights guaranteed in Article 24 of the Constitution.

b. Relevant domestic law

The Spanish law does not permit the possibility of holding a trial by default, except in cases where the penalty is imprisonment of less than one year. When the defendant does not appear in person, the proceedings are suspended (Articles 834-846 of the Code of Criminal Procedure).

COMPLAINTS

The applicant alleges a violation of Article 6 para. 3 (c) of the Convention in that the investigating court required her appearance in person in the criminal proceedings against her and did not allow her to be represented by her lawyer.

THE LAW

The applicant complains that in the criminal proceedings instituted against her, she could not be represented by her lawyer without appearing in person before the court. She invokes Article 6 para. 3 (c) (Art. 6-3-c) of the Convention, which provides that :

> "Everyone charged with a criminal offence has the following minimum rights:
>
> a. ...
>
> b. ...
>
> c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...."

The Commission recalls that the requirements of paragraph 3 of Article 6 (Art. 6) are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1 of the same Article (see, for instance, Eur. Court H.R., Delta v. France, judgment of 19 December 1990, Series A no. 191-A, p. 15, para. 34; Poitrimol v. France, judgment of 23 November 1993, Series A no. 277-A, p. 26, para. 36). The conformity of a trial with the requirements of Article 6 para. 1 (Art. 6-1) must be assessed on the basis of the trial as a whole. It cannot be excluded, however, that a particular element could be so decisive in itself that the fairness of the trial could be determined at an earlier stage (cf. N° 9000/80, dec. 11.3.82, D.R. 28, p. 127).

The Commission notes that the present case differs from the Colozza and Poitrimol cases (Eur. Court H.R., judgment of 12 February 1985, Series A no. 89, p. 15, para. 29, and previously cited para. 31) in that Spanish law does not permit, in cases like the applicant's, a trial to be held when the person "charged with a

criminal offence" is absent. Indeed, according to the domestic law, when a defendant has absconded the proceedings are interrupted and no conviction can be pronounced until the defendant appears in person before the court. In this case, due to the applicant's absence, the investigating judge ordered the suspension of the proceedings. The Commission further recalls that the reason for refusing the applicant legal representation was only that she had not personally appeared in court. In these circumstances, the Commission cannot find any appearance of a violation of Article 6 para. 3 (c) (Art. 6-3-c) of the Convention.

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 27 par. 2 (Art. 27-2) of the Convention.

For this reason, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)