

AS TO THE ADMISSIBILITY OF

Application No. 20832/92
by A.K.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 1 December 1993 the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS

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 17 September 1992 by A.K. against Austria and registered on 22 October 1992 under file No. 20832/92;

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 facts of the case, as they have been submitted by the applicant, may be summarised as follows.

The applicant is a national of Zaire, born in 1962, and currently residing in Vienna. Before the Commission, he is represented by Mr. H. Pochieser, a lawyer practising in Vienna.

On 24 October 1991 the applicant entered Austrian territory, and filed a request for asylum with the Baden District Administrative Authority (Bezirkshauptmannschaft) on 25 October 1991. Pending the asylum proceedings he was granted a provisional residence permit.

On 3 December 1991 the applicant was arrested by the Traiskirchen Police Office (Gendarmerieposten) on the suspicion of having forged his identity card. The Investigating Judge at the Wiener Neustadt Regional Court (Kreisgericht) issued a warrant of arrest on the same day.

On 4 December 1991 the Investigating Judge ordered the applicant's detention on remand on the suspicion of having committed forgery of documents. The Investigating Judge, referring to S. 180 para. 2 of the Austrian Code of Criminal Procedure (Strafprozeßordnung), found that there was a danger of the applicant's absconding

on the ground that he had no relations to Austria.

Under S. 180 paras. 1 and 2 of the Code of Criminal Procedure, a person may be held in detention on remand - where there are serious grounds for suspecting him of having committed a criminal offence - if there is a risk of his absconding, of collusion or of repetition of the offences.

On 23 December 1991 the applicant, represented by his counsel Mr. Pochieser, filed an application for release with the Wiener Neustadt Regional Court. He complained that there was no reasonable suspicion against him. He also submitted that he would not abscond, but could, in case of his release, find accommodation and would produce an affidavit to this effect.

On 9 January 1992 the Judges' Chamber (Ratskammer) at the Wiener Neustadt Regional Court dismissed the applicant's request and ordered his continued detention on remand. The Judges' Chamber considered in particular that there was still a reasonable suspicion that the applicant had forged his Zaire identity card. Furthermore, there was a danger of his absconding. In this respect, the Judges' Chamber noted that other refugees in comparable situations had taken the opportunity to leave the country without appropriate travelling documents. Moreover, the applicant had failed to produce the affidavit regarding his possibility of finding accommodation in Austria. On 15 January 1992 the decision was served upon the applicant.

On 17 January 1992 the applicant lodged a new application for release, and included the affidavit in question. On 24 January 1992 the applicant was released on oath.

On 5 March 1992 the Vienna Court of Appeal (Oberlandes-gericht) rejected the applicant's appeal against the decision of 9 January 1992. The Court of Appeal considered that, following his release, the applicant had no valid interest in a decision on the merits of his appeal.

COMPLAINTS

1. The applicant complains under Article 5 para. 1 (c) and para. 4 of the Convention about his detention on remand and the review proceedings before the Judges' Chamber at the Wiener Neustadt Regional Court. He submits in particular that the Judges' Chamber accepted the charges of the police authorities against him without having sufficiently controlled the accuracy of these allegations. Moreover, the Judges' Chamber should have informed his counsel that the affidavit was missing. He further complains that the rejection of his appeal by the Vienna Court of Appeal amounted to a breach of Article 13 of the Convention.

2. Finally, the applicant complains that his detention was solely based on his foreign nationality. He invokes Article 14 of the Convention.

THE LAW

1. The applicant complains under Article 5 para. 1 (c) and para. 4 and Article 13 (Art. 5-1-c, 5-4, 13) of the Convention about his detention on remand and also the review proceedings concerned.

The Commission notes that the applicant was arrested and taken into detention on remand on the suspicion of having forged his identity card. The Austrian authorities based his arrest and detention on remand on S. 180 of the Code of Criminal Procedure.

The Commission finds no indication that the applicant's deprivation of liberty was not "lawful" and "accordance with the law" within the meaning of Article 5 para. 1 (Art. 5-1) of the Convention.

Furthermore, the Commission considers that, on the basis of the result of the investigations at that early stage of the proceedings, there was a "reasonable suspicion", as referred to in Article 5 para. 1 (c) (Art. 5-1-c), that the applicant had committed forgery of documents. The findings of the Austrian judicial authorities in this respect do not disclose any appearance of misjudgment or arbitrariness.

Moreover, the Commission considers that the applicant's arguments regarding his complaint under Article 5 para. 4 (Art. 5-4) are closely linked to the afore-mentioned issues under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention.

The Commission finds that the applicant failed to show that the proceedings before the Judges' Chamber which dismissed his first request for release from detention on remand on 9 January 1992 did not give him appropriate guarantees in respect of a review of his detention on remand. In particular, the applicant, represented by defence counsel, had an opportunity to put forward his defence and argue in favour of his release.

As to his further complaint about the decision of the Vienna Court of Appeal to reject his appeal, the Commission finds that Article 5 para. 4 (Art. 5-4) has no application for the purpose of obtaining, after release, a declaration that a previous detention was unlawful (cf. No. 10230/82, Dec. 11.5.83, D.R. 32 p. 304).

Consequently, there is no appearance of a violation of the applicant's rights under Article 5 paras. 1 and 4 (Art. 5-1, 5-4) of the Convention.

In view of the above finding under the *lex specialis* of Article 5 para. 4 (Art. 5-4) (cf. Eur. Court H.R., De Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no. 77, p. 27, para. 60), there is no need for the Commission to examine the applicant's complaint under Article 13 (Art. 13) of the Convention.

It follows that this part of the application is clearly manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Moreover, the Commission finds that the applicant's submissions do not disclose any appearance of discrimination against him contrary to Article 14 (Art. 14) of the Convention. This part of the application is, therefore, also manifestly ill-founded.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber President of the First Chamber

(M.F. BUQUICCHIO)

(A. WEITZEL)