COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF SEKANINA v. AUSTRIA

(Application no. 13126/87)

JUDGMENT

STRASBOURG

25 August 1993

In the case of Sekanina v. Austria*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr R. BERNHARDT,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr N. VALTICOS,
Mr R. PEKKANEN,
Mr A.B. BAKA,
Mr J. MAKARCZYK,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 26 February and 25 June 1993,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 10 July 1992, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13126/87) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by an Austrian national, Mr Karl Sekanina, on 21 April 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 2 (art. 6-2).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in

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* The case is numbered 21/1992/366/440. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

the proceedings and designated his lawyer (Rule 30), who was given leave by the President to use the German language (Rule 27 para. 3).

3. The Chamber to be constituted included ex officio Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 September 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr L.-E. Pettiti, Mr B. Walsh, Mr N. Valticos, Mr R. Pekkanen, Mr A.B. Baka and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Austrian Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial and the applicant's claims under Article 50 (art. 50) of the Convention on 16 December.

On 2 February 1993 the Commission produced various documents, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 February 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government
  Mr F. CEDE, Ambassador,
  Legal Adviser, Ministry of Foreign Affairs, *Agent*,
  Mr S. ROSENMAYR, Federal Chancellery,
  Mrs I. GARTNER, Federal Ministry of Justice, *Counsel*;
- for the Commission
  Mr A. WEITZEL, *Delegate*;
- for the applicant
  Mr W. MORINGER, Rechtsanwalt, *Counsel*.

The Court heard addresses by the above-mentioned representatives, and also their replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mr Karl Sekanina is an Austrian national and lives in Vienna.

On 1 August 1985 he was arrested by the police on suspicion of having murdered his wife. Mrs Sekanina had fallen from a window of their matrimonial home, on the fifth floor of a building in Linz, on 4 July 1985.

A. The detention on remand

7. The day after his arrest he was questioned and remanded in custody. He remained in custody until 30 July 1986, his detention being extended on several occasions. The Linz Court of Appeal (Oberlandesgericht) ordered the last such extension on 30 April 1986; it ruled, pursuant to Article 193 paras. 3 and 4 of the Code of Criminal Procedure, that the applicant could be kept in detention until he had been in custody for a total of one year. In addition to the murder of his wife, the applicant was accused of having threatened a fellow detainee in connection with certain admissions relating to the murder charge. The decisions of the Austrian courts were based on various items of evidence and testimony.

B. The trial

8. On 30 July 1986 an assize court (Geschworenengericht) sitting at the Linz Regional Court (Landesgericht) acquitted the applicant on both the charges brought against him. The jury dismissed the first charge by seven votes to one and the second charge unanimously.

The operative provisions and grounds of the judgment read as follows:

> "Pursuant to Article 259 para. 3 of the Code of Criminal Procedure, Karl Leopold Sekanina is acquitted on the charges brought against him, namely:
>
> (1) that he did on 4 July 1985 intentionally kill his wife, Maria Sekanina, by hitting her with a plastic bucket, as a result of which she fell out of the open window of a fifth floor flat and sustained fatal injuries on striking the ground from a height of approximately 16.5 metres; and
>
> (2) that he did at the beginning of August 1985, by making a death threat, namely that 'he would catch his cell-mates outside and kill them' if they 'gave him away', force Egon Werger to remain silent about the statements made by Karl Sekanina in his detention cell concerning the course of events on 4 July 1985.
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> ...
>
> GROUNDS
>
> The acquittal is founded on the jury's verdict."

9. With regard to the first charge, the record (Niederschrift) of their deliberations stated as follows:

> "There is no conclusive evidence on which to convict Mr Sekanina of murder. According to the medical report by Professor Kaiser, Mrs Sekanina could still have

called her husband a murderer. The testimony of certain witnesses appears to us to be unreliable."

On the second charge, they noted that the three other fellow detainees of the persons in question had denied hearing serious death threats.

Consequently, the applicant was immediately released. The prosecution did not appeal against the acquittal.

C. The application for the reimbursement of costs and compensation for the detention

10. On the following day the applicant applied for a contribution from the State to the costs necessarily incurred in his defence, in accordance with Article 393a of the Code of Criminal Procedure (see paragraph 15 below), and for compensation for the pecuniary damage sustained on account of his being kept in detention.

On 4 November 1986 the public prosecutor's office expressed the opinion that the costs sought were excessive and also opposed the claim for compensation, on the ground that the conditions laid down by section 2 (1) (b) of the 1969 Law on Compensation in Criminal Cases (Strafrechtliches Entschädigungsgesetz - the "1969 Law" - see paragraph 16 below) were not satisfied.

11. The Linz Regional Court gave two separate decisions.

On 12 December 1986 it awarded Mr Sekanina 22,546.50 schillings in respect of his necessary defence costs. His appeal against the amount awarded was dismissed by the Linz Court of Appeal on 15 January 1987.

12. On 10 December, on the other hand, the Regional Court had refused to award the compensation sought. In its opinion,

"A claim to compensation under section 2(1)(b) of the [1969] Law ... is conditional on the applicant's being cleared of the suspicion of which he was the object in the criminal proceedings. A person who has been detained is so cleared only if all the suspicious circumstances telling against him have been satisfactorily explained, so that they cease to constitute an argument for the suspect's guilt.

Regard having been had to the prosecution evidence considered as a whole, however, it was not possible to dispel all the suspicions concerning the commission of the offence. Serious grounds for suspecting Mr Sekanina still subsist, in particular his numerous and repeated threats, the acts of violence and aggressive behaviour which have come to light, his evident satisfaction at his wife's death, the description of events given to a cell-mate, the different versions of how the accident happened, the fact that he was under severe financial pressure, his unsuccessful efforts to obtain care and custody of his two children and the consequent build-up of aggressiveness, and his hopes of receiving payment under a life-insurance policy taken out on his wife. In addition, the jurors' voting shows that they decided to acquit him only by giving him the benefit of the doubt."

13. On 25 February 1987 the Linz Court of Appeal upheld this decision. It rejected the argument that section 2(1)(b) of the 1969 Law (see paragraph

16 below) was unconstitutional and in breach of Article 6 para. 2 (art. 6-2) of the Convention in that it required, in addition to an acquittal, the absence of all suspicion. The court held that the presumption of innocence had to be respected in the proceedings prior to the verdict, but did not confer on every detainee the right to compensation in the event of an acquittal. The impugned provision did not refer to guilt but to continuing suspicion. The finding by a court that suspicions subsisted did not conflict with the presumption of innocence. The Court of Appeal added:

> "The appeal also fails on its merits. Contrary to what is argued by the appellant, it cannot be inferred merely from the voting of the jury ... that such a clear verdict meant that suspicion had been removed. In order to establish whether or not such suspicion subsists, it might be more useful to refer to the record of the jury's deliberations. The content of this record ... suggests rather that in the jury's opinion all suspicion had not been removed. However, as the court called upon to rule under the [1969] Law ... is not bound, in its assessment of the position as regards suspicion, by the verdict (of acquittal) at the trial, not even the record of the jury's deliberations is of decisive importance.
>
> It can hardly be denied that following the police inquiries and also after the judicial preliminary investigation there were strong grounds for suspecting the appellant. Indeed, the Linz Court of Appeal decided on 30 April 1986 ... that Sekanina could be kept in detention on remand for up to one year, thereby confirming the strength of the suspicion. In the appealed decision, the finding by the court below that suspicion subsisted was properly founded in particular on the numerous repeated threats made by Mr Sekanina, his acts of violence, his evident satisfaction at his wife's death, the description of the events given to a cell-mate, the different versions of how the accident happened, the severe financial pressure, his unsuccessful attempts to obtain care and custody of his two children, and his hopes of receiving payment under a life-insurance policy taken out on his wife. With respect to the different versions of the accident related by the appellant to third parties, the Court of Appeal refers in particular to the evidence given at the trial of 28 to 30 July 1986 by the witnesses Gundula Sekanina (pp. 45, 50 and 51 of the transcript of the trial) and Johanna and Kurt Schöllnberger (pp. 105, 106, 117 and 119 of the transcript). The appellant told his fellow employee Siegfried Wurzinger that he had been in another room at the time of the fall (Wurzinger, pp. 126, 127), whereas Brigitte Grasböck noticed during the fall that the claimant - wearing a light-coloured vest - was already at the window, the entire upper part of his body being visible. He had been holding a bucket out of the window with outstretched arms and pouring water; in addition when he came down to his wife he had, she thought, been wearing a blue vest (Grasböck, pp. 65 and 66 of the transcript). During his interrogation (which was taken down in writing) by the Linz Federal Police on 2 August 1985 (p. 214, volume 1), the appellant placed on record that shortly before the fall his wife had quarrelled with him. According to the evidence of the witness Egon Werger, the appellant had told him that 'during the quarrel he' - Sekanina - '[had run] towards his wife in a rage' (pp. 166 and 167 of the transcript). The appellant was described by several witnesses as quick-tempered and violent (pp. 44 and 82 of the transcript). He is said to have made death threats against his wife several times, the last occasion being about a week before her death (pp. 113 and 572 of volume 1, p. 216 of volume 2, and pp. 58, 75, 76, 102, 115, 142 and 143 of the transcript of the trial). Finally, it may also be noted that on 3 July 1985, the day before his wife's death, the appellant pressed his tailor for a dark jacket he had ordered in 1983, as he now needed it."

The Court of Appeal concluded:

"Having had regard to all these circumstances, the majority of which were not disproved at the trial, the jury took the view that the suspicion was not sufficient to reach a guilty verdict; there was, however, no question of that suspicion's being dispelled."

II. THE APPLICABLE DOMESTIC LAW

A. Acquittal

14. Under Article 259 of the Code of Criminal Procedure,

"The accused shall be acquitted by judgment of the court:

1. ... 2. ... 3. where the court finds that the act giving rise to the prosecution is not an offence under the law or that the alleged offence was not made out or that it has not been established that the accused committed the act of which he is accused or that circumstances exist which deprive the act in question of its criminal character or that the continuation of the prosecution is ruled out on grounds other than those set out in paragraphs 1 and 2."

B. Reimbursement of costs

15. According to Article 393a of the same code:

"(1) Where the prosecution is not brought solely on the basis of a private action seeking conviction or a private action for damages (Article 48), if an accused is acquitted ..., the federal authorities shall, on an application to this effect, make a contribution to the costs of the defence. The contribution shall cover the expenses necessarily and genuinely incurred by the accused and in addition, except in the case provided for in Article 41 para. 2, a flat-rate contribution to the costs of his defence lawyer ...

(2) ...

(3) A claim for compensation shall not be allowed where the accused has deliberately caused the suspicion which gave rise to the criminal proceedings or where the proceedings have come to an end solely because the accused carried out the act in question in a state in which he was not responsible for his actions or because the authorisation for the prosecution was withdrawn during the trial."

C. Compensation in respect of detention on remand

16. Entitlement to compensation for detention on remand during criminal proceedings in which the person concerned is acquitted is governed by section 2(1)(b) of the 1969 Law, which provides as follows:

"(1) A right to compensation arises:

(a) ...

(b) where the injured party has been remanded in custody or placed in detention by a domestic court on suspicion of having committed an offence which is liable to criminal prosecution in Austria ... and is subsequently acquitted of the alleged offence or otherwise freed from prosecution and the suspicion that he committed the offence is dispelled or prosecution is excluded on other grounds, in so far as these grounds existed when he was arrested;

..."

PROCEEDINGS BEFORE THE COMMISSION

17. Mr Sekanina applied to the Commission on 21 April 1987. He alleged that there had been a violation of the principle of presumption of innocence guaranteed by Article 6 para. 2 (art. 6-2). When dismissing his claim for compensation for wrongful detention, the Austrian courts had considered that, despite his acquittal, he was still the object of suspicion.

18. On 3 September 1991 the Commission declared the application (no. 13126/87) admissible. In its report of 20 May 1992 (made under Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 6 para. 2 (art. 6-2) (by eighteen votes to one). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 2 (art. 6-2)

19. According to the applicant, by refusing to award compensation in respect of his detention on remand, the Austrian courts had disregarded the presumption of innocence laid down in Article 6 para. 2 (art. 6-2), which is worded as follows:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 266-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

The Government contested this view; the Commission accepted it.

A. Applicability of Article 6 para. 2 (art. 6-2)

20. The Government argued primarily that the above-mentioned provision was not applicable. The applicant's claim for compensation had been made after the criminal proceedings had been definitively concluded by a judgment on the merits; this had not been the situation in the cases which had previously come before the Court on this issue. Mr Sekanina had been acquitted and had no longer had the status of a person "charged with a criminal offence" within the meaning of Article 6 para. 2 (art. 6-2). In addition, the decision relating to the claim in question had not constituted a consequence or a necessary concomitant of the acquittal because it had been taken in separate proceedings, instituted before a different authority, namely the Linz Regional Court.

21. The Commission, on the other hand, referring to its opinion in a previous case (decision of 6 October 1982, application no. 9295/81, X v. Austria, Decisions and Reports 30, p. 227), considered that the presumption of innocence was obligatory not only for criminal courts ruling on the merits of a charge, but also for other authorities.

22. The Court's task is not to express a view on such a general issue; it is confined to determining whether the approach followed in the applicant's case affected the right which Article 6 para. 2 (art. 6-2) guaranteed to him.

Admittedly the Linz Regional Court gave its decision rejecting the claim on 10 December 1986, several months after the judgment acquitting the applicant on 30 July 1986 (see paragraphs 8 and 12 above). In the Court's opinion, Austrian legislation and practice nevertheless link the two questions - the criminal responsibility of the accused and the right to compensation - to such a degree that the decision on the latter issue can be regarded as a consequence and, to some extent, the concomitant of the decision on the former (see, mutatis mutandis, the Englert v. Germany judgment of 25 August 1987, Series A no. 123-B, p. 54, para. 35). Moreover, as is the case under the legislation of several other European countries in which a right to compensation in respect of detention on remand is recognised in the event of acquittal, the criminal court which tries the case on its merits, in this instance the Linz Landesgericht, albeit composed differently, in principle has jurisdiction in the matter (see paragraphs 8, 11 and 12 above).

Finally, the Austrian courts relied heavily on the evidence from the Assize Court's case file in order to justify their decision rejecting the applicant's claims (see paragraphs 12-13 above), thus demonstrating that, in their opinion, there was indeed a link between the two sets of proceedings.

The applicant can therefore invoke Article 6 para. 2 (art. 6-2) in relation to the impugned decisions.

B. Compliance with Article 6 para. 2 (art. 6-2)

23. Mr Sekanina complained that the Austrian courts had dismissed his claim for compensation on the ground that his acquittal had not dispelled the suspicion of which he had been the object.

24. The Government prayed in aid the Court's case-law in this area (see in particular the following judgments: Adolf v. Austria, 26 March 1982, Series A no. 49, Minelli v. Switzerland, 25 March 1983, Series A no. 62, and Lutz, Englert and Nölkenbockhoff v. Germany, 25 August 1987, Series A no. 123). In their contention, these cases showed that statements are consistent with the presumption of innocence if they refer to the continued existence of suspicion, but not if they reflect the opinion that the person concerned is guilty. The grounds for the contested decisions were, in the Government's view, to be classified in the first category rather than the second.

25. The Court stresses in the first place, like the Commission and the Government, that Article 6 para. 2 (art. 6-2) does not guarantee a person "charged with a criminal offence" a right to compensation for detention on remand imposed in conformity with the requirements of Article 5 (art. 5) (see the Englert judgment, cited above, Series A no. 123-B, p. 54, para. 36) and that the applicant did not dispute the lawfulness of his detention.

It observes that there remains great diversity between the laws in European countries providing for compensation in the event of the acquittal of a person held on remand. In the majority of them the award of any compensation is made conditional on the claimant's conduct prior to or during the trial or is left to the discretion of the courts.

In addition, despite certain similarities, the situation in the present case is not comparable to that governed by Article 3 of Protocol No. 7 (P7-3), which applies solely to a person who has suffered punishment as a result of a conviction stemming from a miscarriage of justice.

26. It is true that according to the Lutz, Englert and Nölkenbockhoff v. Germany judgments, cited by the Government (see paragraph 24 above), "a decision whereby compensation for detention on remand ... [is] refused following termination of the proceedings may raise an issue under Article 6 para. 2 (art. 6-2) if supporting reasoning which cannot be dissociated from the operative provisions ... amounts in substance to a determination of the accused's guilt without his having previously been proved guilty according to law ..." (see the above-mentioned Englert and Nölkenbockhoff judgments, pp. 54-55, para. 37, and p. 79, para. 37, and also the Lutz judgment, cited above, p. 25, para. 60). Mr Sekanina complained, inter alia, of the reasons given in the contested decisions.

27. Nevertheless, the Court is here confronted with a different situation from those which it has previously encountered.

In the first place the Lutz case did not concern the possible award of compensation for detention on remand. Only the Englert and Nölkenbockhoff cases dealt with this issue.

Mr Englert had been sentenced at first instance to fifteen months' imprisonment for extortion with menaces, but the Federal Court of Justice set the judgment aside and remitted the case to the Regional Court for retrial. The latter court discontinued the proceedings on the ground that the sentence that Mr Englert could expect was negligible in comparison with one he was serving at the time in respect of another conviction. It ordered that he should bear his own necessary costs and expenses and refused to award him compensation for the detention on remand (which had lasted nineteen months and two weeks), because the circumstances rebutting the presumption of innocence were so overwhelming that a conviction was clearly more likely than an acquittal (see the above-mentioned Englert judgment, pp. 44-47, paras. 11, 13-14 and 17).

Mr Nölkenbockhoff had been sentenced at first instance to eight years' imprisonment for breach of trust, criminal bankruptcy and fraud, but he died while his appeal on points of law was still pending before the Federal Court of Justice. His widow sought an order that the Treasury should bear the necessary costs and expenses and claimed compensation for her husband's detention on remand (for over three years), but the Essen Regional Court found against her. It considered that it had been bound to reach such a decision when, "were it not for this technical bar [on account of the accused's death], the defendant would almost certainly have been convicted or his conviction almost certainly have been upheld" (see the Nölkenbockhoff judgment cited above, pp. 69-70, paras. 14-15 and 17).

While the Court considered that the terms used by the German courts had been ambiguous and unsatisfactory, it took the view that their decisions described "a state of suspicion" and did not amount to a finding of guilt (see the Englert and Nölkenbockhoff judgments cited above, p. 55, para. 39, and pp. 80-81, para. 39).

28. It may be seen from the foregoing that in the Englert and Nölkenbockhoff cases the proceedings had been terminated before any final decision on the merits. The applicants in those cases had been convicted at first instance and had then appealed from the judgments of the relevant courts, but their appeals were still under review when the proceedings were discontinued.

That is not the position in this case. The Assize Court sitting at the Linz Regional Court acquitted Mr Sekanina on 30 July 1986 by a judgment which became final (see paragraphs 8-9 above).

29. Notwithstanding this decision, on 10 December 1986 the Linz Regional Court rejected the applicant's claim for compensation, pursuant to section 2(1)(b) of the 1969 Law (see paragraphs 12 and 16 above). In its view, there remained strong indications of Mr Sekanina's guilt capable of

substantiating the suspicions concerning him; it listed them relying on the Assize Court file. The evidence in question could, in its opinion, still constitute an argument for the applicant's guilt. The court inferred from the record of the jury's deliberations that in acquitting the applicant they had given him the benefit of the doubt (see paragraph 12 above).

The Linz Court of Appeal went further in the grounds of its decision of 25 February 1987. It considered that section 2(1)(b) of the 1969 Law, according to which compensation is confined to persons that have been not only acquitted but also cleared of all suspicion, was in conformity with the Austrian Constitution and Article 6 para. 2 (art. 6-2) of the Convention. In this respect it did not regard itself as bound by the Assize Court's acquittal. On the other hand, it referred to its own decision of 30 April 1986 authorising detention on remand for a year (see paragraph 7 above); it saw this as confirmation of the gravity of the suspicions concerning the applicant. After having drawn up a comprehensive list of items of evidence against Mr Sekanina, in its view not refuted during the trial, and after having carefully examined the statements of various witnesses, it concluded: "The jury took the view that the suspicion was not sufficient to reach a guilty verdict; there was, however, no question of that suspicion's being dispelled" (see paragraph 13 above).

30. Such affirmations - not corroborated by the judgment acquitting the applicant or by the record of the jury's deliberations - left open a doubt both as to the applicant's innocence and as to the correctness of the Assize Court's verdict. Despite the fact that there had been a final decision acquitting Mr Sekanina, the courts which had to rule on the claim for compensation undertook an assessment of the applicant's guilt on the basis of the contents of the Assize Court file. The voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation. However, it is no longer admissible to rely on such suspicions once an acquittal has become final. Consequently, the reasoning of the Linz Regional Court and the Linz Court of Appeal is incompatible with the presumption of innocence.

31. Accordingly, there has been a violation of Article 6 para. 2 (art. 6-2).

II. APPLICATION OF ARTICLE 50 (art. 50)

32. Under Article 50 (art. 50),

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

33. Mr Sekanina claimed in the first place 663,102.35 schillings for loss of earnings, 189,457.80 schillings for the loss of a redundancy payment and 82,887 schillings for the reduction in his pension rights, all these different heads of damage deriving from his detention. At the hearing of 24 February 1993 his lawyer also referred to the loss of other opportunities, which were said to have resulted from the violation of Article 6 para. 2 (art. 6-2).

34. The Government denied that the applicant had any right to compensation in respect of the detention on remand because no such obligation could be inferred from the case-law of the Convention institutions (see paragraph 25 above). In any event, the applicant had not produced any evidence in support of his claim.

35. The violation found by the Court does not concern the lawfulness of the detention on remand; there is therefore no direct causal connection between it and the damage alleged, so that the applicant's claims must be dismissed.

B. Costs and expenses

36. The applicant sought a total of 121,908.80 schillings in respect of his costs and expenses before the Austrian courts and the Convention institutions.

The Government contested certain items concerning the domestic proceedings and criticised the scales applied to the European proceedings.

37. Making an assessment on an equitable basis, the Court awards the applicant 110,000 schillings.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 para. 2 (art. 6-2) is applicable in this case and that there has been a violation of that provision;

2. Holds that the respondent State is to pay to the applicant, within three months, 110,000 (one hundred and ten thousand) schillings for costs and expenses;

3. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 August 1993.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the concurring opinion of Mr Matscher is annexed to this judgment.

R. R.
M.-A. E.

CONCURRING OPINION OF JUDGE MATSCHER

(Translation)

I agree with the outcome - a finding that the contested decisions of the Linz Regional Court and Appeal Court disregarded the presumption of innocence.

Nevertheless I should like to stress that the conditions for a verdict of acquittal and the conditions which must be satisfied for the grant of compensation within the meaning of section 2(1)(b) of the 1969 Law are not identical. In particular, an acquittal may cover a wide variety of situations. For example, the deed in question may not constitute a criminal offence under the criminal law, or the accused may have committed an act which was in itself punishable but while he was in a state in which he was not responsible for his actions, or the court may be convinced of the accused's innocence, or again there may be insufficient evidence to convict (see Article 259 para. 3 of the Code of Criminal Procedure).

In the present case it is clear that the acquittal was based on the last of the above-mentioned possibilities. Accordingly, it would seem to me to be difficult to affirm (see paragraph 30 of the judgment) that the finding in a subsequent decision relating to a compensation procedure that suspicion subsists leaves open a doubt as to the correctness of the Assize Court's decision.

I have nevertheless reached the conclusion that there was a violation of the Convention and this is on account of some of the reasons given in the contested decisions, which went beyond what is required under section 2(1)(b) of the 1969 Law as grounds for rejecting a claim for compensation. I do, however, accept that - given the wording of the provision in question - the statement of such grounds compels the court to engage in a balancing act between a lack of adequate reasons and the risk of offending against the presumption of innocence.

It would therefore be desirable to amend the text of section 2(1)(b) of the 1969 Law.