

RESOLUTION (63) DH 3 ¹

(Adopted by the Ministers' Deputies on 23rd October 1963)

APPLICATION No. 778/60 : AUSTRIA AGAINST ITALY

The Committee of Ministers,

Having regard to Article 32 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter called "the Convention");

Having regard to the Report drawn up by the European Commission of Human Rights (hereinafter called "the Commission") in accordance with Article 31 of the Convention, and relating to the Application lodged on 11th July 1960 by the Government of the Federal Republic of Austria against the Government of the Italian Republic;

Whereas the said Report, adopted by the Commission on 30th March 1963, was sent to the Committee of Ministers on 24th May 1963, and the period of three months provided for in Article 32, paragraph (1) of the Convention has elapsed without the case having been brought before the European Court of Human Rights in pursuance of Article 48 of the Convention;

Whereas in its Application, the Government of the Federal Republic of Austria alleged that several breaches of Article 6 and Article 14 of the Convention had occurred during the proceedings taken in the Italian Courts against six young men from the village of Fundres/Pfunders (Upper Adige) accused of having committed a murder on the night of 15th/16th August 1956, following which the said young men had been sentenced to terms of imprisonment;

Whereas the Commission, having rejected part of the Application of the Government of the Federal Republic of Austria as inadmissible, retained as admissible, for the purpose of establishing the facts and formulating an opinion regarding them, the following issues :

1. See 124th meeting of the Ministers' Deputies, page 160.

(i) Did the Trent Assize Court of Appeal violate Article 6 (3) (d) of the Convention by refusing to hear Mrs. Giovanna Johanna Ebner and Dr. Kofler as witnesses ?

(ii) Did that Court violate the same provision when on 20th March 1958 it held an investigation on the spot in the absence of the accused who were then in prison ?

(iii) Was the rule regarding presumption of innocence (Article 6 (2) of the Convention) observed in this case ?

(iv) Did the alleged violation of paragraphs (3) (d) and (2) of Article 6 involve disregard of the right to a fair trial as guaranteed by paragraph 1 of that Article ?

(v) Did the alleged violation of paragraphs (3) (d) and (2) of Article 6 involve disregard of the principle of non-discrimination set out in Article 14 of the Convention ?

Whereas the Commission, in its Report, expressed its opinion on each of the above points as follows :

(i) Since the same legal provisions applied to all categories of witnesses and there was no inequality in their application, there was no violation of Article 6 (3) (d) of the Convention ;

(ii) The Trent Court of Appeal did not violate Article 6 (3) (d) of the Convention by holding, on 20th March 1958, an investigation on the spot in the absence of the accused who were then in prison ;

(iii) It is not established that the Italian Courts, either during the various hearings or in the grounds for their judgments, failed to accord to the accused the benefit of the presumption of innocence ;

(iv) When considered in the general context of Article 6 (1) of the Convention, the alleged breach of paragraphs (3) (d) and (2) of Article 6 did not involve disregard of the right of the accused to a fair trial ;

(v) An examination of the case-files does not disclose the existence of any discrimination contrary to Article 14 ;

Whereas the Commission, in conclusion, was of the opinion that the provisions of the Convention had not been violated in the cases under examination ;

Agreeing with the reasoning of the Commission ;

Voting in accordance with the provisions of Article 32 paragraph (1) of the Convention,

Decides that in the present case there has been no violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.