

COUNCIL OF EUROPE

EUROPEAN COMMISSION
OF HUMAN RIGHTS

APPLICATION No. 1602/62

LODGED BY

ERNST STÖGMÜLLER

AGAINST

AUSTRIA

**REPORT
OF THE COMMISSION**

(Adopted on 9th February, 1967)

STRASBOURG

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INTRODUCTION

1. The following is the outline of the case as submitted by the Parties to the European Commission of Human Rights.

The Applicant is an Austrian citizen, born in 1934 and at present living in the United Kingdom.

On 3rd March, 1958, the Applicant was arrested in Austria on suspicion of being involved in numerous offences of fraud and usury. He was detained on remand until 21st April, 1958, when he was conditionally released.

On 24th August, 1961, the investigating judge (Untersuchungsrichter), finding that the Applicant had travelled abroad without permission, issued a new warrant for his arrest and, on 25th August, 1961, the Applicant was re-arrested. His petitions for release pending trial were refused on several occasions by the competent Austrian courts on the grounds that he might flee the country (Fluchtgefahr) or commit further offences (Wiederholungsgefahr). On 26th August, 1963, the Applicant was released on bail of 280.370 Austrian Schillings.

The investigation against the Applicant was concluded in July 1966, but until now he has not been formally charged.

The Commission is only concerned with the Applicant's allegation that his detention pending trial constituted a violation of Article 5, paragraph (3) of the Convention which guarantees to a detained person the right to be brought to trial within a reasonable time or to be released pending trial.

The Respondent Government submits that the duration of the Applicant's detention on remand was justified in view of the complexity of the facts which were to be investigated; further that the Applicant had himself complicated the investigation by lodging numerous complaints and applications.

2. The Application was lodged on 1st August, 1962, and declared partly admissible by the Commission on 1st October, 1964. The present Report, which was adopted by the Commission on 9th February, 1967, has been drawn up in pursuance of Article 31 of the Convention and is now transmitted to the Committee of Ministers in accordance with paragraph (2) of that Article.

A friendly settlement of the case has not been reached and the purpose of the Commission in the present Report, as provided in paragraph (1) of Article 31, is accordingly :

(1) to establish the facts (Part I), and

(2) to state an opinion as to whether the facts found disclose a breach by the Respondent Government of its obligations under the Convention (Part II).

A schedule setting out the history of the proceedings and the Commission's decision on the admissibility of the Application are attached as Appendices I and II to this Report and an account of the Sub-Commission's unsuccessful attempts to reach a friendly settlement has been produced as a separate document.

The full text of the oral and written pleadings of the Parties, together with the documents handed in as exhibits, are held in the archives of the Commission and are available if required.

PART I

POINTS AT ISSUE, SUBMISSIONS OF THE PARTIES
AND ESTABLISHMENT OF THE FACTS

A. POINTS AT ISSUE

3. The following points were at issue at the beginning of the proceedings before the Commission :

- (1) Whether or not the Applicant's arrest and detention were in conformity with Article 5, paragraph (1), sub-paragraph (c) of the Convention.
- (2) Whether or not the length of the Applicant's detention on remand violated Article 5, paragraph (3) of the Convention.
- (3) Whether or not the delay in bringing the Applicant to trial violated Article 6, paragraph (1) of the Convention.
- (4) Whether or not the Applicant's right under Article 6, paragraph (1) to be heard by an "impartial tribunal" was violated in the investigation against him.
- (5) Whether or not the Applicant's right under Article 6, paragraph (3), sub-paragraph (d) of the Convention was violated by the refusal of the investigating judge to hear certain witnesses for the defence.

The development in respect of each of these issues was as follows :

As to (1) / Article 5, paragraph (1), sub-paragraph (c) /

4. The Applicant submitted that his arrest and detention were contrary to Article 5, paragraph (1), sub-paragraph (c) of the Convention as there was neither a reasonable suspicion of his having committed an offence nor a danger that he might commit further offences if he remained at liberty.

The Respondent Government submitted that this complaint was manifestly ill-founded.

On 7th July, 1964, the Commission decided to declare the complaint inadmissible as being manifestly ill-founded within the meaning of Article 27, paragraph (2) of the Convention on the ground that, at the time of the Applicant's arrest and detention, there was certainly a reasonable suspicion of his having committed an offence and that, consequently, his arrest and detention were in conformity with Article 5, paragraph (1), sub-paragraph (c) of the Convention.

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The submissions of the Parties and the findings of the Commission on the admissibility of this complaint are set out in the Commission's decision of 1st October, 1964 (Appendix II to this Report).

As to (2) [Article 5, paragraph (3)]

5. The Applicant alleged, with regard to the length of his detention on remand, a violation of his right under Article 5, paragraph (3) of the Convention to be brought to trial within a reasonable time or to be released pending trial.

The Respondent Government submitted that this complaint was manifestly ill-founded.

By its decision of 1st October, 1964, the Commission declared this complaint admissible on the ground that it was of such complexity that its determination should depend upon an examination of the merits of the case and that, consequently, it could not be regarded as manifestly ill-founded within the meaning of Article 27, paragraph (2) of the Convention.

The pleadings of the Parties and the findings of the Commission on the admissibility are set out in the above decision.

As to (3) [Article 6, paragraph (1)]

6. In his application form, the Applicant alleged a violation of his right under Article 6, paragraph (1) of the Convention, insofar as it guarantees, in the determination of any criminal charge, a hearing within a reasonable time.

In its observations of 28th August, 1963 (1), the Respondent Government submitted that this allegation was manifestly ill-founded.

At the oral hearing before the Commission on 1st October, 1964, the Applicant's lawyer, Dr. Tuma, stated that he did not maintain the above complaint (2) and, on the same day, the Commission decided not to avail itself of its competence ex officio to examine this complaint further (3).

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- (1) Doc. A 82.415.
(2) Doc. A 90.914, page 18.
(3) See Appendix II to this Report.

On 14th December, 1966, the Commission examined the possibility of re-opening ex officio the examination of the Applicant's complaint under Article 6, paragraph (1), of the Convention, concerning the length of the criminal proceedings against him, and decided in this respect not to revise its decision of 1st October, 1964, on the admissibility of the Application. On the other hand, the Commission did not exclude the possibility of considering the period of more than two years, which had elapsed since that decision was taken, as a new element of fact which might justify the introduction of a new application, if the Applicant should deem such a step to be in his own interest.

This decision has been communicated to the Parties.

As to (4) / Article 6, paragraph (1) /

7. The Applicant alleged a violation of his right under Article 6, paragraph (1) of the Convention, insofar as it guarantees, in the determination of any criminal charge, a hearing by an impartial tribunal. He stated that the investigating judge did not carry out the investigation against the Applicant in an impartial manner.

The Respondent Government submitted that this complaint was manifestly ill-founded.

On 7th July, 1964, the Commission decided to declare the complaint inadmissible as being manifestly ill-founded on the ground that the Applicant had failed to submit any evidence to support his allegation that the investigation proceedings were conducted in a partial manner.

The submissions of the Parties and the findings of the Commission on the admissibility are set out in the Commission's decision of 1st October, 1964 (1).

As to (5) / Article 6, paragraph (3), sub-paragraph (d) /

8. In his application form the Applicant alleged a violation of Article 6, paragraph (3), sub-paragraph (d) of the Convention, in that the investigating judge refused to hear certain witnesses for the defence.

(1) Appendix II.

In its observations of 28th August, 1963 (1), the Respondent Government submitted that this allegation was manifestly ill-founded.

At the oral hearing before the Commission on 1st October, 1964, the Applicant's lawyer, Dr. Tuma, did not maintain the above complaint (2) and, on the same day, the Commission decided not to avail itself of its competence ex officio to examine this complaint further (3).

"Equality of arms" in the court proceedings concerning the Applicant's petitions for release pending trial (Article 6, para. (1), read in conjunction with Article 5, paras. (3) and (4) of the Convention)

9. The question whether the principle of "equality of arms" was violated in the proceedings regarding release pending trial was raised by the Applicant and examined by the Commission in the case of Neumeister against Austria (Application No. 1936/63)(4). In that case, the question is now before the Court.

The same question is being considered by the Commission in the cases of Matznetter (Application No. 2178/64) and Köplinger (Application No. 1850/63) against Austria. In those cases, too, it was raised by the respective Applicants.

In the present case, the question of a violation of the principle of "equality of arms" in the proceedings concerning release pending trial has not been raised by either Party nor been dealt with by the Commission in its decisions of 7th July and 1st October, 1964, on the admissibility of the Application.

Having regard to the above circumstances, the Commission found on 8th February 1967, that there were no reasons of a general character affecting the observance of the Convention which would necessitate an examination of this question in the present case and it consequently decided not to consider it ex officio.

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(1) Doc. A 82.415.

(2) Cf. Doc. A 90.914.

(3) See Appendix II.

(4) See pages 86 - 88 of the Commission's Report in the Neumeister case.

Conclusion

10. It follows that only point (2) remained before the Commission.

Thus the task of the Commission, as prescribed in Article 31, paragraph (1), of the Convention, was to establish the facts and to state its opinion with regard to the following question:

Did the length of the Applicant's detention pending trial violate Article 5, paragraph (3), of the Convention ?

B. SUBMISSIONS OF THE PARTIES

11. The submissions which, in the proceedings before the Commission and the Sub-Commission, were made by the Parties on the issue of the Applicant's detention on remand can be grouped under the following headings :

- I. The question whether or not there has been a violation of the Applicant's right under Article 5, paragraph (3) of the Convention to be brought to trial within a reasonable time or to be released pending trial (see Chapter I below).
- II. The question whether or not there existed a danger that the Applicant might, if released, flee the country or commit further offences [Article 5, paragraphs (3) and (1), subparagraph (c) - see Chapter II].

Chapter I

The submissions of the Parties on the question whether or not there has been a violation of the Applicant's right under Article 5, paragraph (3) of the Convention to be brought to trial within a reasonable time or to be released pending trial

12. The Parties made submissions on the following two aspects of the above question :

- I. Whether or not a violation of Article 5, paragraph (3) was excluded by the fact that the Applicant was eventually released pending trial.
- II. Whether or not the length of the Applicant's detention pending trial was 'reasonable' within the meaning of Article 5, paragraph (3).
- I. As to the question whether or not a violation of Article 5, paragraph (3) of the Convention was excluded by the fact that the Applicant was eventually released pending trial

13. The Applicant submitted that, under Article 5, paragraph (3), the question was not simply whether or not he had been released but whether his release had been effected at the proper time, in other words, whether he had been released before the period already spent by him in detention had become unreasonable (1).

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(1) Verbatim Record of the oral hearing before the Commission on 1st October, 1964 - Doc. A 90. 914; page 20.

14. The Respondent Government submitted that the rights guaranteed by Article 5, paragraph (3) were alternative. A detained person was entitled either to a trial within a reasonable time or to his release pending trial. The Applicant had been released pending trial, in accordance with the second alternative of Article 5, paragraph (3). It followed that the first alternative was no longer at issue and that, consequently, the Commission was not competent to examine whether or not the length of the Applicant's detention had been 'reasonable' within the meaning of this alternative (1).

II. As to the question whether or not the length of the Applicant's detention pending trial was "reasonable" within the meaning of Article 5, paragraph (3) of the Convention

15. The Applicant submitted that the length of his detention totalling two years and seven weeks could not be considered "reasonable" within the meaning of Article 5, paragraph (3). He stated, in particular, that :

(a) His long detention constituted an anticipated punishment. In this connection, the Applicant pointed out that the penalty for offences of the kind with which he might ultimately be charged ranged from 6 months to 10 years imprisonment and that, if convicted, he could expect a sentence of 2 to 3 years imprisonment (2).

(b) An undue delay in the investigation against him was caused by the fact that, during his detention from 1961 until 1963, the investigating judge, Dr. Leonhard, was also working on another difficult and complex case (3). Furthermore, in the present case, Dr. Leonhard did not follow the customary procedure; for, instead of hearing the accused first, he examined a great number of witnesses at different places.

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- (1) The Government's communication of 5th June, 1964, and Verbatim Record of the hearing on 1st October, 1964, pages 19-20.
 - (2) Appendix to application form, page 1; the Applicant's letter of 14th August, 1963, pages 1-2; Verbatim Record of the hearing before the Commission on 1st October, 1964, pages 15-16; the Applicant's memorial of 31st October, 1964, on the merits of the case - Doc. D 4985 (submitted in English) -, point 3.
 - (3) See the Commission's Report of 27th May, 1966, on Application No. 1936/63 (Neumeister against Austria).

During the two years of his detention from 1961 until 1963, the Applicant was heard on 13 occasions only, namely on 26th August and 28th December, 1961, 11th, 13th, 16th, 17th, 18th and 23rd July, 1962, 29th May, 18th June, 5th, 7th and 9th July, 1963. These hearings, insofar as they were not of a purely formal nature, related to only five business transactions of some 80 transactions under investigation. Apparently the investigating judge tried to use the Applicant's detention as a means of inducing him to make a confession. In the summer of 1962 Dr. Leonhard stated that the investigation could be completed shortly and, in order to facilitate the proceedings, the Applicant withdrew a complaint which he had lodged. Subsequently, he was examined seven times within a fortnight but the investigation then slowed down again (1).

- (c) During the first year of his detention, the Applicant's letters to his parents were frequently seized by the investigating judge and the Applicant's sister was refused permission to see him. It was only after he had been in detention pending trial for about a year that, exasperated by the slowness of the proceedings, he filed a number of challenges against the investigating judge and all other judges on the circuit of the Court of Appeal (Oberlandesgericht) in Vienna. The Applicant did not contest that these motions caused a suspension of the investigation but he considered that their examination could have been completed within one month (2).

16. The Respondent Government submitted that the term "reasonable time" in article 5, paragraph (3) of the Convention must be interpreted in the light of the particular circumstances of each case and that, in the circumstances of the present case, the length of

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- (1) The Applicant's letters of 14th January, 1963, page 1, and 19th July, 1963, page 1; Verbatim Record of the hearing before the Commission on 1st October, 1964, pages 12-13, 23 and 31; the Applicant's memorial of 31st October, 1964, point 4; Verbatim Record of the hearing before the Sub-Commission on 30th September and 1st October, 1965 - Doc. D 9128 (available in English and German) -, pages 4-6, 9-11 and 22-27; Verbatim Record of the hearing before the Sub-Commission on 20th July, 1966, Doc. 2766-06.2/31 (available in English and German), pages 13-14.
- (2) The Applicant's observations of 14th September, 1963 - Doc. A 82.902 (submitted in English) -, page 6; Verbatim Record of the hearing before the Commission on 1st October, 1964, pages 11, 13-14, 18 and 25-26.

the Applicant's detention pending trial was "reasonable". (1)
In particular, the Government stated that :

- (a) The Applicant was strongly suspected of having committed numerous offences under Articles 183 (embezzlement), 197 and 200 (fraud) and 205 c (breach of trust) of the Criminal Code (Strafgesetz) and under Articles 2 and 3, paragraph (4) of the Usury Act (Wucherergesetz). The investigating judge had to examine some 80 complicated business transactions entered into by the Applicant. During the investigation, which lasted from 1957 until 1966, 179 witnesses were heard in different parts of Austria either by the investigating judge himself or on commission. By June 1965, the case-file comprised some 20.000 pages (2).
- (b) The Government contested the allegation of the Applicant that his detention was designed to induce him to make a confession. As to the course of the investigation against him from 1961 until 1963, the Government referred to a schedule (3) setting out the action taken by the investigating judge and the Office of the Public Prosecutor as well as the applications and petitions filed by the Applicant and the decisions given on them (4).

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- (1) The Government's further observations of 9th December, 1963, on the admissibility of the Application - Doc. D 1211 (English translation by the Council of Europe) -, page 2; Verbatim Record of the hearing before the Commission on 1st October, 1964, pages 2-3.
 - (2) The Government's observations of 28th August, 1963, on the admissibility of the Application - Doc. A 82.415 (English translation by the Council of Europe) -, pages 4 and 7-8; the Government's further observations of 9th December, 1963, page 2; Verbatim Record of the hearing before the Commission on 1st October, 1964, pages 2-8; the Government's communication of 14th June, 1965 - Doc. D 7568 (English translation by the Council of Europe) -, pages 3 and 6; Verbatim Record of the hearing before the Sub-Commission on 20th June, 1966, page 28.
 - (3) Submitted under cover of a letter dated 31st August, 1965 - see Appendix III to this Report.
 - (4) The Government's memorial of 2nd March, 1965, on the merits of the case - Doc. D 4636 -, page 2; Verbatim Record of the hearing before the Sub-Commission on 30th September and 1st October, 1965, pages 8 and 12.

- (c) From the outset the Applicant had attempted to delay the investigation. For example, during his detention in 1958, he filed an application that the criminal proceedings pending against him at the Regional Court (Kreisgericht) of Wels should be transferred to the Regional Court (Landesgericht) of Linz. Both this request and a further application for transfer from Linz to Vienna were granted - with the consequence that, in each case, another investigating judge had to be appointed. In 1962 the Applicant lodged a third petition for the proceedings to be transferred from Vienna to Salzburg but this was refused. Furthermore, within the space of five months, he filed 28 applications and complaints calling for a decision by the investigating judge. In particular, in 1962, he challenged not only this judge, but the entire circuit of the Court of Appeal of Vienna, thus causing an interruption of several months in the investigation. In a letter to his lawyer the Applicant made it clear that he intended to cause the investigating judge of the Regional Court of Vienna - who by then was thoroughly conversant with the facts of the case - to be replaced by another magistrate. In the opinion of the Government the Applicant was abusing his rights under the Convention if he now complained, with regard to his detention, that he had not been brought to trial within a "reasonable time" (1).

Chapter II

The submissions of the Parties on the question whether or not there existed a danger that the Applicant might, if released, flee the country or commit further offences / Article 5, paragraphs (3) and (1), sub-paragraph (c) of the Convention /

17. By the Commission's decision of 7th July, 1964, the Application was declared inadmissible, insofar as it related to Article 5, paragraph (1), subparagraph (c), of the Convention. (2) However, in the proceedings before the Sub-Commission, both Parties have made submissions on this aspect of the case. Consequently, the Commission has included a summary of these submissions in its present Report. On the other hand, it has not dealt with this aspect of the case in its establishment of the facts and in its opinion.

- (1) The Government's observations of 28th August, 1963, pages 2-3 and 6-7; Verbatim Record of the hearing before the Commission on 1st October, 1964, pages 3, 7-10 and 24-26; Verbatim Record of the hearing before the Sub-Commission on 30th September and 1st October, 1965, page 7; the Government's communication of 14th June, 1965, pages 3-5; Verbatim Record of the hearing before the Sub-Commission on 20th July, 1966, pages 20-27.
- (2) See paragraph 4 (page 3) above.

18. The Applicant submitted that his detention pending trial ceased to be lawful on 10th November, 1961; on that day the Court of Appeal of Vienna, in its final decision on a complaint against detention by the Applicant, stated that there was no risk of his absconding. As to the finding of the Court that there existed - in November 1961 - a danger that he might commit further offences, the Applicant pointed out that, prior to his second arrest on 25th August, he had sold his business on 14th August, 1961. He considered that he had thus detached himself from any commercial activity which, in the eyes of the Prosecution, might have tempted him to commit further offences. The civil actions brought by him during his detention against former clients did not constitute commercial activities but were intended to promote the disclosure of the facts of his case. The Applicant also stated that the reasons which finally led to his release in 1963 corresponded to those contained in his own requests for release two years earlier. It followed that he should have been released in 1961. (1)

19. The Respondent Government referred to the Commission's decision of 7th July, 1964, by which the Application was declared inadmissible as being manifestly ill-founded, in so far as it related to Article 5, paragraph (1), sub-paragraph (c), of the Convention (2). The Government submitted that, consequently, the Commission was no longer seized of the question whether or not the Applicant's detention was lawful under this provision.

In any case, it resulted from the decisions of the competent Austrian Courts that, during the period concerned, there existed a danger that the Applicant might commit further offences. Indeed, while in prison, he had pursued his business activities by bringing civil proceedings against former clients. His continued detention was therefore necessary (3).

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(1) Appendix to application form; the Applicant's letters of 14th January, 1963, page 1, and of 14th August, 1963, page 2; his observations of 14th September, 1963, pages 3, 5 and 9; Verbatim Record of the hearing before the Commission on 1st October, 1964, pages 11-12, 14, 20-21 and 28-30; the Applicant's memorial of 31st October, 1964, page 2; Verbatim Record of the hearing before the Sub-Commission on 30th September and 1st October, 1965, pages 3-4; Verbatim Record of the hearing before the Sub-Commission on 20th July, 1966, page 15.

(2) Cf. paragraph 4 (page 3) above.

(3) The Government's observations of 28th August, 1963, pages 4-5; Verbatim Record of the hearing on 1st October, 1964, pages 19-20, 27-28 and 30; Verbatim Record of the hearing on 30th September and 1st October, 1965, pages 6-8.

C. ESTABLISHMENT OF THE FACTS

20. The Commission has based its opinion as to the alleged violation of Article 5, paragraph (3), of the Convention on the criteria previously adopted in the cases of Wemhoff against the Federal Republic of Germany (Application No. 2122/64) and of Neumeister against Austria (Application No. 1936/63). These criteria, which are reproduced in paragraph 68 of the present Report, have also been followed in the establishment of the facts. Consequently, the facts indicated below are grouped under the same headings as the criteria on which the opinion in Part II is based.

Chapter I

The actual length of detention

21. In the opinion of the Commission, the Applicant's first detention (3rd March until 21st April, 1958) cannot be counted under Article 5, paragraph (3), because it occurred before the entry into force of the Convention with respect to Austria (3rd September, 1958). In this respect, the Commission refers to its decision on the admissibility of Application No. 343/57 (Nielsen against Denmark). (1)

The Applicant's second detention on remand lasted from 25th August, 1961, until 26th August, 1963, that is two years.

22. With regard to the length of detention on remand, Article 190 of the Austrian Code of Criminal Procedure lays down the following rule: "Detention on remand ... shall cease as soon as its grounds no longer exist. All authorities concerned in criminal proceedings shall take steps to keep such detention ... as short as possible." (2)

(1) Yearbook of the European Convention on Human Rights, Vol. 2, pages 412, 454.

(2) According to paragraph (2) of Article 190, a detention ordered exclusively under Article 175, paragraph (1), No. 3 (danger of the detainee destroying evidence or influencing witnesses) must not exceed three months.

Chapter II

The length of detention on remand in relation to the nature of the offence, the penalty prescribed and to be expected in the case of conviction and any legal provisions making allowance for such period of detention in the execution of the penalty which may be imposed

23. Under the Austrian Code of Criminal Procedure, as applied at the time of the Applicant's detention on remand, there was no legal relationship between the nature of the alleged offence and the length of the detention on remand but only between the period of detention and the grounds on which it was imposed. (1) However, in their submissions concerning the question whether the Applicant's detention was "reasonable" within the meaning of Article 5, paragraph (3), of the Convention, the Parties have discussed the nature of his alleged offences and the possible penalty. (2)

I. The charges against the Applicant

24. Until now, the Applicant has not been formally charged. (3) The investigation (Voruntersuchung) against him concerned alleged offences under Articles 183 (embezzlement), 197 and 200 (fraud) and 205 c (breach of trust) of the Criminal Code (Strafgesetz) and under Articles 2 and 3, paragraph (4), of the Usury Act (Wuchergesetz). These provisions state as follows:

(1) Article 183 of the Criminal Code

"Anyone who ... retains or appropriates property entrusted to him to a value of over 2.500 Schillings (4) ... commits ... embezzlement (Veruntreuung)."

(2) Article 197 of the Criminal Code

"Any person who, by means of deceitful statements or actions, leads another person into error with the intent that some party, whether the State, a local authority or another person, shall suffer injury to his property or other rights or who, with this intent and in the said manner, exploits the error or ignorance of another person, commits fraud, whether he was induced so to act out of self-interest, passion, by the intention of giving unlawful assistance to another person or by any other secondary motive."

(1) Cf. paragraph 22 above, paragraph 39 below and the Commission's Report in the Neumeister case (pages 18-20).

(2) See paragraphs 15(a) and 16(a) above.

(3) This was confirmed by the Representatives of the Respondent Government at the friendly settlement discussion on 13th December, 1966.

(4) At the material time: 1.500 Schillings.

Article 200 of the Criminal Code

"Any other fraudulent action constitutes a crime (Verbrechen) where the damage caused, or intended, exceeds 2.500 Schillings."(1)

(3) Article 205 c of the Criminal Code

"Anyone who intentionally misuses the authority conferred on him by law, official mandate or legal transaction to dispose of the property of, or to bind, a third party, thereby causing damage to the party concerned, is guilty of breach of trust. (Untreue) ..."

(4) Article 2 of the Usury Act

"Any person who, when granting or extending a loan, intentionally exploits the carelessness, pressing circumstances, mental weakness, inexperience or agitation of another person by obtaining for himself or a third party either the grant or the promise of a valuable consideration obviously out of proportion with the performance rendered ..."

Article 3 of the Usury Act

"4. Anyone who professionally practices usury ..."

II. The penalty prescribed and to be expected

25. In assessing the penalty which the Applicant has to expect in the case of his conviction, the Commission has had regard to the minimum and the maximum penalties which, under Austrian law, can be imposed for each of the above offences. They are as follows:

- (1) Under Article 184 of the Criminal Code, the minimum penalty for embezzlement is five years' severe imprisonment (schwerer Kerker) if the amount involved exceeds 25.000 Schillings; (2) the maximum penalty is ten years' severe imprisonment. In the case of mitigating circumstances, the minimum penalty is six months' imprisonment - see Article 265a of the Code of Criminal Procedure (Strafprozessordnung).
- (2) and (3) In cases where the amount involved exceeds 25.000 Schillings (2), the penalties prescribed for fraud and breach of trust are the same as the penalty prescribed for embezzlement - see Articles 203 and 205c of the Criminal Code and Article 265a of the Code of Criminal Procedure.

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(1) At the material time: 1.500 Schillings.

(2) At the material time: 10.000 Schillings.

(4) Under Article 2 of the Usury Act, the minimum penalty for usury is three months, the maximum penalty one year's strict detention (strenger Arrest). Article 3, paragraph 4, of the Usury Act states: "Anyone who professionally practices usury shall be punished by one to five years' imprisonment where a relatively large number of persons has suffered serious financial loss."

26. Austrian law provides for the principle of the "absorption" of offences. In application of this principle, an accused who has committed several similar offences is judged for the offence calling for the heaviest punishment; the concurrence of offences constitutes an aggravating circumstance - see Articles 34, 35, 267, 44 (a, b) and 263 (1) of the Criminal Code.

27. The Commission has had particular regard to the possibility of imposing a less severe sentence than the minimum prescribed for the class of offence concerned (1). In Austrian law, a court may, in case of extenuating circumstances, impose a sentence which is lower than the minimum sentence prescribed for the offence concerned and there is in fact a wide practice to make use of this possibility (2).

III. Legal provisions making allowance for the period spent in detention on remand in the execution of the penalty imposed

28. Article 55a of the Criminal Code provides:

"Any time spent by the convicted person in ... detention on remand before the passing of judgment in the first instance shall be counted as part of the sentence ..., in so far as the detention is not due to his own fault."

IV. Possibilities of release on probation

29. In its evaluation of criterion No. 2, the Commission has finally considered the possibility that the Applicant, if he should be convicted and sentenced, might be released on probation after having served only a part of his sentence.

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(1) Cf., on the one hand, Articles 184, 203 and 205c and, on the other hand, Article 265a of the Criminal Code which are quoted in paragraph 25 above.

(2) See for instance Roland Grassberger, Die Strafe, in: Osterreichische Juristenzeitung, 1961, pages 177-178.

In this connection, the Commission has had regard to Articles 12-20 of the Act on Conditional Sentences (Gesetz über die bedingte Verurteilung) of 1949 (1) as amended by the Criminal Law Amendment Act (Strafrechtsänderungsgesetz) of 1960 (2). Article 12 of this Act provides :

"(1) When a prisoner has served two thirds of a sentence ... involving deprivation of liberty of a fixed duration and has spent at least eight months ... in prison, he may be released on probation.

"(2) Conditional release is however permissible only where it can be expected from the prisoner's character, his antecedents, his prospects of making an honest living and his behaviour during detention that his conduct after release will be good, and where the execution of the residual sentence can be waived without detriment to the ordre public.

As stated by the Austrian Government in reply to a questionnaire of the European Committee on Crime Problems, conditional release under the Act on Conditional Sentences "is not discretionary but obligatory in certain circumstances. The prisoner may rightfully claim release if not only the temporal but also the remaining statutory conditions are fulfilled ... Agreement on the part of the prisoner is not necessary, although the absence of such agreement may influence the good conduct prediction." (3)

The decision rests with the Court (Articles 16 and 17 of the Act).

Chapter III

Material, moral or other effects on the detained person

I. General conditions of the Applicant's detention

30. In Austria, a person in detention pending trial must be treated in accordance with Articles 183-189 of the Code of Criminal Procedure. The detention must respect his person and honour

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(1) Federal Gazette (Bundesgesetzblatt) No. 277/1949.

(2) Federal Gazette No. 152/1960.

(3) See Doc. DPC/CEPC II (66) 3, page 5, and European Committee on Crime Problems, Suspended Sentence, Probation and Other Alternatives to Prison Sentences, Council of Europe, 1966, page 17.

as far as possible (Article 183, first sentence). The prisoner may only be subjected to such restrictions as are necessary to secure his person and prevent arrangements detrimental to the investigation from being made (Article 183 in fine). Article 184 deals with the form of detention. Article 185 provides that the prisoner must be allowed comforts and employment, in so far as they are compatible with the object of detention and do not interfere with the good order of the establishment or endanger security. Under Article 187 a remand prisoner may conduct correspondence subject to certain conditions. Under Article 186 he may receive visitors, even persons with whom he has business connections; however, visits must be in the presence of a court officer.

31. The Applicant maintains that, during the first half of his detention, his letters to his parents were frequently seized by the investigating judge and that the Applicant's sister was refused permission to see him (1). It also appears that he was unable to vote at the General Election (2).

32. It results from the Schedule submitted by the Respondent Government (3) that the following decisions were taken with regard to the conditions of the Applicant's detention on remand :

- (1) on 6th November, 1961, the Applicant was informed that a letter from him to his father, Johann Stögmüller, had not been forwarded on the ground that it dealt with the criminal proceedings in question;
- (2) on 15th November, 1961, the investigating judge informed the Applicant that a further letter from him had not been forwarded on the ground that it contained improper statements;
- (3) decision of the investigating judge dated 24th April, 1962, ordering the seizure of a letter from the Applicant to his parents; the Applicant's appeal from this decision was dismissed by the Judges Chamber (Ratskammer) on 15th June, 1962;
- (4) decision of 22nd June, 1962, by which the Applicant was refused permission to receive foreign language textbooks (appeal dismissed on 29th June, 1962);

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- (1) See paragraph 15 (c) above.
 - (2) This follows from a complaint which, according to a note of the investigating judge, could not be examined as the Applicant had challenged all judges of the circuit.
 - (3) Appendix III to this Report.

- (5) decision that a letter from the Applicant should not be forwarded (appeal dismissed on 13th November, 1962);
- (6) with respect to a complaint about the long delays in the receipt of his mail caused by censorship, the Applicant was informed on 26th November, 1962, that the Judges Chamber could not pass a decision on this complaint as he had challenged all judges of the circuit of the Court of Appeal of Vienna;
- (7) on 14th March, 1963, the Applicant was informed that permission to write would not be granted to the extent he had applied for.

II. Material effects of the Applicant's detention

33. The Applicant sold his business on 14th August, 1961. He thereby lost his former main livelihood. However, this sale took place before his arrest on 25th August, 1961.

34. During his detention from 25th August, 1961, until 26th August, 1963, the Applicant complained repeatedly that a further prolongation of his detention would deprive him of the possibility of finishing his training as a professional pilot and consequently of his new main livelihood.

(a) In a petition of 24th November, 1961, to the President of the Regional Court, he stated: "I decided to submit my case to you as my continued detention in custody would ruin completely the livelihood which I have built up with a capital outlay of some 200,000 Schillings, of which a large part was contributed by my father whose financial position is not too favourable, and with two years' arduous study ... Were I to be released in the near future, I would not only have a livelihood but also the possibility of discharging my obligations towards the Finance Ministry ..., whereas I am otherwise devoid of means of subsistence as my pilot's licence expires shortly and I shall lose the amount spent on my training up to now and my profession of pilot, if I am not free to secure the renewal of my licence."

(b) In his letter of 14th August, 1963, to the Commission, the Applicant stated: "My pilot's licence expired on 13th December, 1961, but I (obtained) a prolongation of its validity for a further two years. In order to make another prolongation possible, ... my release must take place before 15th October, 1963, in order to prevent me from losing my livelihood." (As stated above, the Applicant was released on 26th August, 1963.)

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III. Other effects of the Applicant's detention

35. Apart from deprivation of freedom and its general repercussions, which are inherent in the mere fact of imprisonment, the Applicant has not complained that the period of detention has damaged his health or destroyed his family ties.

Chapter IV

The conduct of the Applicant

- I. Did he contribute to the delay or expedition of the investigation or trial?
- II. Was the procedure delayed as a result of the introduction of applications for release pending trial, appeals or other remedies taken by him?
- III. Did he request release on bail or offer other guarantees to appear for trial?

I. Contribution to the delay or expedition of the investigation or trial (1)

36. The Applicant's submissions on this question are set out above in paragraph 15 (c).

The relevant submissions of the Respondent Government are reproduced in paragraph 16 (c).

37. With regard to the application of 7th November, 1962, in which the Applicant challenged all judges of the circuit (Sprengel) of the Court of Appeal of Vienna (2) and requested the

(1) See also paragraphs 43 and 57 below.

(2) In the proceedings before the Commission, the Applicant alleged a violation of his right under Art. 6, para. (1), of the Convention, insofar as it guarantees, in the determination of any criminal charge, a hearing by an impartial tribunal. He stated that the investigating judge did not carry out the investigation against the Applicant in an impartial manner. On 7th July, 1964, the Commission decided to declare this complaint inadmissible as being manifestly ill-founded on the ground that the Applicant had failed to submit any evidence to support his allegation that the investigation proceedings were conducted in a partial manner. - See paragraph 7 above.

transfer of his case to the Regional Court of Salzburg, the Commission has established the following details:

- (1) The challenge included the investigating judge. Under Austrian law, an investigating judge must suspend the investigation the moment he is challenged; he may resume the investigation only after the challenge has been rejected.(1)
- (2) On 19th November, 1962, the application was transmitted to the Office of the Public Prosecutor (Staatsanwaltschaft) of Vienna for comments.
- (3) On 29th November, 1962, the Applicant's request for transfer of his case was submitted to the Court of Appeal of Vienna.
- (4) The case-file was submitted to the Court of Appeal on 14th December, 1962.
- (5) The decision of the Supreme Court (Oberster Gerichtshof) dismissing the Applicant's request for transfer of his case was communicated to the investigating judge on 15th January, 1963.
- (6) On 5th February, 1963, the investigating judge, referring to the Applicant's challenge motion, informed the Supreme Court that he did not feel biased in this case.
- (7) On 6th February, 1963, the Supreme Court dismissed the application of 7th November, 1962, insofar as the Applicant had challenged the judges of the Court of Appeal of Vienna.
- (8) On 27th February, 1963, the Court of Appeal of Vienna dismissed the remainder of the Application of 7th November, 1962, i.e. the challenge of the judges of the Regional and District Courts in the circuit of the Court of Appeal.
- (9) The above decisions of 6th and 27th February were communicated to the investigating judge on 4th March, 1963.

(1) See the Verbatim Record of the hearing before the Commission on 1st October, 1964, page 24.

38. When giving evidence as a witness before the Sub-Commission on 20th July, 1966, the investigating judge, Dr. Leonhard, stated: "Throughout the Stögmüller proceedings ... there was decided obstructionism. I was hardly able to deal with the material side of the case, for there was a constant flow of appeals of one kind and another from Stögmüller, which made it not merely difficult but often impossible for me to work on the facts. In one letter Stögmüller spoke of tactics and whether he should continue them. In a letter to his lawyer he asked whether these tactics should be prolonged." (1)

With reference to this statement, the Agent of the Respondent Government submitted a photocopy of the Applicant's letter of 5th February, 1963, to his lawyer, Dr. Tuma. (2) The Sub-Commission admitted (3) this letter which was subsequently read out. (4)

The Commission has noted that the above letter, which constituted a communication from a remand prisoner to his lawyer, was read by the investigating judge, Dr. Leonhard, who controlled the Applicant's mail, and that Dr. Leonhard made a photocopy of the letter before forwarding it to the Applicant's lawyer. (5) In these circumstances, the Commission did not consider it appropriate to take the letter into consideration in forming its opinion in the present case. It consequently decided not to include this letter in its statement of the facts of this case.

(1) Verbatim Record of the hearing on 20th July, 1966, page 14.

(2) Ibidem page 20. See also paragraph 16 (c) of the present Report.

(3) Verbatim Record of the hearing on 20th July, 1966, page 23.

(4) Ibidem pages 24 - 27.

(5) See ibidem page 22.

II. Applications and decisions concerning the Applicant's arrest and his subsequent detention (1)

39. As stated above in paragraph 21, the Applicant was detained pending trial from 25th August, 1961, until 26th August, 1963. The following summary is based on the statements made and the documents submitted by the Parties.

- (1) On 24th August, 1961, the investigating judge of the Regional Court (Landgericht) of Vienna, referring to Article 175, paragraph (1), No. 4 (2) and Article 191 of the Code of Criminal Procedure (3), issued a warrant for the Applicant's arrest (Haftbefehl) on the grounds that he had travelled abroad without permission and that there was a danger that he might commit further offences. The Applicant was consequently arrested on 25th August, 1961.
- (2) In his appeal (Haftbeschwerde) of 29th August, 1961, he submitted that his journey to Greece had been authorised by the investigating judge and he contested that there was a danger of his committing further offences. He stated that he had sold his business 11 days before his second arrest and that his new occupation was that of an employed pilot.

On 19th October, 1961, the Judges Chamber (Ratskammer) rejected the appeal. The Chamber stated that the Applicant's re-arrest was the consequence of his breach of the conditions upon which he had been released in 1958 and pointed out that, since he had in the meanwhile made frequent flights abroad in an aeroplane belonging to his family, there was also a danger that he might flee the country, particularly as the offences imputed to him were punishable by a prison sentence of five to

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(1) As to the applications and decisions concerning the conditions of his detention, see paragraph 32 above.

(2) Article 175 (1) 4 states: "Where particular circumstances justify the fear that the accused will repeat a completed action or carry out an attempted or threatened action."

(3) Under Article 191, a person in detention pending trial may be released on parole. On 14th April, 1958, the Applicant had been released under this provision on the solemn undertaking (Gelöbnis) that he would not leave his place of residence without permission of the investigating judge. Cf. page 14, footnote (1), above.

ten years;(1) this danger justified his detention under Article 175, paragraph (1), No. 2 of the Code of Criminal Procedure.(2) Finally, the Chamber confirmed the finding of the investigating judge that there was a danger of the Applicant committing further offences as, since his release in 1958; he had allegedly committed fresh offences under Articles 183, 197 and 205c of the Criminal Code. (3)

- (3) The Applicant's further appeal from this decision was dismissed by the Court of Appeal of Vienna on 10th November, 1961, on the sole ground that there was a danger of his committing further offences. The Court of Appeal found that there was no risk of flight and stated with respect to the danger of recidivism:

"In view, however, of the information filed against the Applicant, subsequent to his release in 1958, by Josef and Maria Reichl, Karl Schmültisch, Hans Burgmüller, and Alois Holzknacht, concerning fraud alleged to have been committed between May, 1951 and March, 1961, there is an eminent risk of recidivism. The Applicant is alleged to have defrauded the said informers of well over 70.000 S in connection with loan transactions which he negotiated partly alone, partly in collaboration with others (Knöpflmacher and Brommer), resorting at times to

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- (1) See paragraph 25 above.
- (2) Article 175 (1) 2 states: "Where he has made preparations to abscond or where, by reason of the severity of his prospective sentence ... or for any other good reason, it appears likely that he will abscond."
- (3) See paragraph 24 above.

the same kind of fraudulent operations as he has already been accused of in various other cases. In the light of these well-founded informations and of the time at which the alleged new offences took place, there is reason to believe that the Applicant, if again set at liberty until the end of the criminal proceedings, might, despite the fact that he has officially given up business as a financial agent and particularly now that he is deprived of his means of livelihood, commit further offences of the kind he was accustomed to commit for years in order to maintain his previous standard of living."

- (4) In a new request for his release (Enthafungsbitte) of 6th December, 1961, the Applicant submitted that a prolongation of his detention would deprive him of the possibility to become a professional pilot. He also offered to find bail at an amount within his own and his family's financial means.

On 3rd January, 1962, this petition was refused by the investigating judge who stated that, in the meanwhile, further offences had come to light; these offences had allegedly been committed by the Applicant after his release in 1958.

- (5) The Applicant's appeal of 8th January was dismissed by the Judges Chamber on 25th January, 1962. In this decision, the Chamber referred to a new criminal charge concerning an offence allegedly committed by him in 1960. This charge had been brought by a certain Mrs. Holzdorfer on 19th January, 1962.
- (6) The Applicant's further appeal was dismissed on similar grounds by the Court of Appeal on 14th March, 1962. The Court held that, as habitual fraud had been established, there was a danger of recidivism.

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- (7) In 1963 the Applicant addressed himself to the Constitutional Court (Verfassungsgerichtshof) complaining that the proceedings against him had already continued for five years and that, although he had been in custody for 18 months, there were several matters on which he had not yet been heard. This petition was rejected by the Court on 27th March, 1963, on the ground that it was not competent to examine appeals against court decisions or against the behaviour of judicial organs with regard to jurisdiction.
- (8) In a new request for his release of 9th August, 1963, the Applicant offered to find bail at an amount of 280.370 Schillings. This petition was granted by the Judges Chamber on 25th August and, on 26th August, 1963, the Applicant was released on parole and bail.

When giving evidence as a witness before the Sub-Commission on 20th July, 1966, the investigating judge, Dr. Leonhard, stated with respect to the above decision: (1)

"Once Stögmüller wished to change his occupation from money-lender to aviator, there was no further danger of repetition of the offences. If he does not want to be a money-lender any more, he cannot commit any more offences like the ones alleged. On the other hand, his wish to become a pilot raises the danger of flight again; for as a pilot one often spends more time abroad than at home ... release became possible. Because of the change of occupation there was no further danger of repetition of the offences, and the danger of flight was averted by the provision of bail ..."

III. Applications and decisions concerning release on bail

40. The following applications for release on bail were made by the Applicant:

- (1) In a petition for release of 6th December, 1961, the Applicant offered to find bail at an amount within his own and his family's financial means. In the decision on this application, the question of bail was not gone into.(2)

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(1) See Verbatim Record, page 15.

(2) Cf. paragraph 39, No. 4, above.

- (2) In a petition of 9th August, 1963, the Applicant offered to find bail at an amount of 280.370 Schillings. As stated above, this decision was granted by the Judges Chamber on 25th August, 1963. (1)

In its decision, the Chamber referred to Article 192 of the Code of Criminal Procedure which provides: "Except in the case of a crime for which the minimum penalty is ten years imprisonment, detention on the grounds of danger of flight may on request be terminated or waived against a solemn undertaking as provided for in Article 191 and against a deposit of security or the provision of bail for an amount to be determined by the Judges Chamber in the light of the consequences of the offence, the personal circumstances of the detainee and the means of the person giving bail ..."

Chapter V

Difficulties in the investigation of the case

I. Complexity of the facts to be investigated

41. In the proceedings before the Commission, the Parties agreed that the facts, which had to be investigated in the criminal proceedings against the Applicant, were very complex. (2)

42. When giving evidence as a witness before the Sub-Commission, the investigating judge, Dr. Leonhard, compared the difficulties in the investigation of the present case with those in the Neumeister case (3), which were "more technical and more a matter of substantive law. That case was concerned with what are known as export frauds, which were perpetrated with great, great subtlety, and considerable brainwork was required to get to the back of it all. From the substantive law angle, the Stögmüller case was not so difficult; the difficulty lay primarily in its volume.

... Stögmüller was a money-lender, and as such he made various loans to persons in need of funds, mainly farmers.

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- (1) See paragraph 39, No. 8, above.
 (2) See the Verbatim Record of the hearing before the Commission on 1st October, 1966, pages 2-7 and 15, and paragraphs 15 (b) and 16 (a) of the present Report.
 (3) Application No. 1936/63, see the Commission's Report in that case, pages 31-44.

When the loans were repaid, he did not simply take the money back; on the amounts repayable he gave bills to third persons, and on the money due from these he gave bills to yet others. Some of the loan transactions switched to and fro between five or six persons - there were payments, repayments and everything you can imagine - so that it was difficult to find a single denominator for any particular case.

But in addition the Stögmüller proceedings were particularly difficult because of their volume. There were 70 cases that the Public Prosecutor's Office wanted to have investigated, all loans, 90% loans to farmers faced with distraint. These 70 cases were themselves so extensive and so confusing that they required time rather than brains."(1)

Dr. Leonhard also stated that, after the proceedings against the Applicant had been transferred from the Regional Court of Linz to the Regional Court of Vienna in 1959, the investigating judge received "cratesfuls of (the Applicant's) files from the Revenue Police. These crates had to be sorted through with this question in mind: Where, in the numerous papers in these crates, shall I find the material I need for these 70 cases? That consumed a most tremendous amount of time. I then returned two crates that were not required ... together with their contents ..." (2)

II. Difficulties in the interrogation of the defendant and in the examination of witnesses and documents

43. With respect to his interrogation of the Applicant, Dr. Leonhard stated before the Sub-Commission: "With my 30 years of service ... I have wide experience behind me. I would say that Stögmüller is the most intelligent person I have come across in those 30 years... At first I sat down with Stögmüller... and began to go over the facts with him. After two or three days I realised that, because of his intelligence, this method was not getting me anywhere with him. It is of course usual for a judge first to examine the defendant on his alleged offences and then hear the witnesses, collect the remaining evidence and finally perhaps confront the defendant with the evidence obtained in the meantime, so that he may say how he explains the new facts. That was not possible in Stögmüller's case ...

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(1) Verbatim Record of the hearing before the Sub-Commission on 20th July, 1966, pages 5-6.

(2) Ibidem page 7.

Stögmüller insisted that the minutes should contain only his words. He objected to any kind of summary. I had to accept everything he told me, without being able to raise the slightest objection as to whether this or that statement could be correct, for I had not the necessary testimony, land register extracts and other evidence. I came to see that, by proceeding in this way with Stögmüller, I was not making any progress in the case." (1)

44. With regard to the difficulties in the examination of witnesses and other evidence, the Commission has established the following facts:

Originally over 80 business transactions of the Applicant were under investigation but ultimately only 45 transactions remained. The acts were perpetrated throughout the Austrian territory but were concentrated mainly in the area around Wels in Upper Austria. Wels is not in the circuit (Sprenghel) of the Court of Appeal of Vienna but in the circuit of the Court of Appeal of Linz. The examination of witnesses and the consultation of land registers could therefore not be undertaken wholly by the investigating judge himself but had, in part, to be effected on commission. To simplify the proceedings, Dr. Leonhard personally heard some of the witnesses in Wels, Ried im Innkreis and Braunau, with the agreement of the judicial authorities. To this end he was in Wels from 21st to 23rd November, 1961, and interrogated five witnesses; in Ried im Innkreis from 27th to 29th November, 1961, where he heard six witnesses; and in Braunau from 11th to 14th December, 1961, where he questioned seven witnesses. He also consulted the local land registers and took other measures called for by the proceedings. Thirty seven witnesses were heard by Dr. Leonhard personally. One hundred facts and means of evidence had to be sought on commission. On one occasion a co-defendant was questioned for two days. (2)

Dr. Leonhard stated before the Sub-Commission: "I had to examine most of the witnesses living in other places myself, for the whole question was so difficult that I could not expect a judge in Salzburg or Linz or Klagenfurt to concern himself

(1) Ibidem pages 7-8.

(2) This paragraph is based on the case-file of the criminal proceedings against the Applicant, which Mr. Ermacora consulted on behalf of the Commission.

with the material. Moreover, if the examination had been conducted by a judge who was not so familiar with the material, the result would not have been as satisfactory as I should have liked. So one autumn ... I went to Upper Austria for three, four or five weeks, solely to examine witnesses in the Stögmüller case". (1)

Following a request filed by the Applicant shortly before his release in August, 1963, an expert was instructed to prepare an opinion on the financial operations as a whole. (2)

Chapter VI

The manner in which the investigation was conducted

I. The system of investigation applicable

II. The conduct by the authorities of the investigation (the diligence shown by them in dealing with the case and the manner in which they organised the investigation)

I. The system of investigation applicable

45. The rules governing the conduct of the investigation are to be found in Chapters X - XV of the Code of Criminal Procedure (Strafprozessordnung). The object of the investigation is to subject a particular person's action to a provisional examination and to ascertain the facts as clearly as is necessary in order to establish features likely either to cause the prosecution to be terminated or to prepare the way for arraignment and the hearing of evidence in the trial.

46. Under Article 93 of the Code of Criminal Procedure, the judicial investigation (Voruntersuchung) is to be conducted, as a rule, by an investigating judge. This judge has to take action ex officio and in so doing he may visit the scene of the offence or have recourse to experts or other evidence.

47. Under Article 175 of the Code of Criminal Procedure, the investigating judge may order a person suspected of an offence to be taken into temporary custody (vorläufige Verwahrung). This Article states as follows :

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(1) Verbatim Record of the hearing on 20th July, 1966, page 5.

(2) See the statement of Dr. Schmidt at the hearing before the Commission on 1st October, 1964 (Verbatim Record, page 26). The opinion of this expert has not been submitted to the Commission.

"(1) The investigating judge may, even without previous summons, order a person suspected of a crime (Verbrechen) or misdemeanour (Vergehen) to be brought before him and to be taken into temporary custody where:

1. the suspected person has been caught in the act or where, immediately after the act, he is officially pursued on suspicion of having committed the crime or misdemeanour or comes under public suspicion of having done so, or where he is caught with arms or with other objects derived from the crime or misdemeanour or which otherwise suggest that he took part therein ;
2. the suspected person has made preparations to abscond or where, by reason of the severity of his prospective sentence, his itinerant way of life or because he is unknown in the neighbourhood, homeless or without papers, or for any other good reason, it appears likely that he will abscond;
3. the suspected person has attempted to influence witnesses, experts or other accused in a manner likely to prevent the ascertainment of the facts or otherwise to hinder the investigation by destroying traces of the crime or misdemeanour, or where there are good grounds to fear that this might occur;
4. particular circumstances justify the fear that the accused will repeat a completed action or carry out an attempted or threatened action.

(2) In the case of a crime for which the law prescribes a minimum sentence of ten years imprisonment, the investigating judge shall immediately issue a warrant for the arrest of the person suspected of it."

48. Everyone brought before the court must be heard by the investigating judge within 24 hours or, where this is impossible, three days. A defendant can only be remanded in custody in the ordinary way if he meets the requirements stated in Article 175, paragraph (1); Nos. 2, 3 or 4 of the Code of Criminal Procedure; however, detention on remand is compulsory in the case of a crime for which the law prescribes a minimum sentence of ten years imprisonment - see Article 180, paragraphs (1) and (2). No absolute duration is laid down for remand but, under Article 190, detention must be terminated as soon as the grounds for it no longer exist, and all authorities concerned have to

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take steps to keep it as short as possible. (1) Under Articles 191 and 192, a person in detention pending trial may be released on parole and bail. (2)

49. It results from Article 113 of the Code of Criminal Procedure that a defendant may appeal to the Judges Chamber against the decision of the investigating judge ordering his detention on remand. Under Article 114, he may appeal from the Chamber's decision to the Court of Appeal. (3)

50. The identity of the investigating judge is not decided by the court at its own discretion but is fixed in accordance with the following provisions:

- (1) Article 87, paragraph (3), first sentence, of the Austrian Federal Constitution (Bundes-Verfassungsgesetz) states that the affairs of each court are to be divided among its judges according to a plan made up in advance for a definite period.
- (2) Article 4, paragraph (2), of the Act Amending the Judiciary Act (Gerichtsverfassungsnovelle) provides that this plan is to be made up by the Personnel Divisions (Personalsenate) of the courts of first and second instance.
- (3) According to Article 18 of the Code of Criminal Procedure, the composition of the divisions of the courts dealing with criminal cases is to be decided for one year each time.
- (4) Further provisions in this regard are to be found in Articles 17, 18 and 19 of the Internal Rules for the Courts of First and Second Instance (Geschäftsordnung für die Gerichte I. und II. Instanz). Under these provisions, criminal cases are to be divided among judges according to the initial letters of the names of the defendants or according to the places where the offences were allegedly committed. A notice on the division of cases among the judges must be put up in the court house.
- (5) A case which has been assigned to a certain judge can only be transferred from that judge where he is prevented from exercising his functions; in this case a substitute judge is to serve - see Article 87, paragraph (3) in fine, of the Federal Constitution and Article 18 of the Code of Criminal Procedure.

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- (1) Cf. paragraph 22 above.
 - (2) Cf. paragraphs 39 and 40 above.
 - (3) Cf. paragraph 39 above.

- (6) According to Article 17, paragraph (5), of the above Internal Rules, the distribution of work can be modified during the year for which it has been adopted where the personnel has changed or where certain judges or divisions of a court have too much or too little work or where there are other important reasons. As a result of this provisions, a case can be removed from a judge overburdened with work and be given to another judge, where the general distribution of work is altered.
- (7) Article 83, paragraph (2), of the Federal Constitution states: "No one may be removed from the jurisdiction of his lawful judge."

51. Where a person is suspected of several offences, all the offences shall, as a rule, be prosecuted at the same time before one court and one judgment shall be given in regard to these offences (Article 56 of the Code of Criminal Procedure). However, under Article 57, the Court may decide, either on an application or ex officio, that certain offences shall be dealt with in separate proceedings, where this seems appropriate in order to avoid delay or difficulties in the proceedings or to shorten the detention of the accused.

The Public Prosecutor is obliged to take action and institute proceedings ex officio in regard to all punishable acts which come to his knowledge - see Article 34, paragraph (1), of the Code of Criminal Procedure. In the case of several offences, however, he is authorised under paragraph (2) of Article 34 to discontinue the prosecution in respect of certain charges where this is not likely to have any considerable influence on the penalty.

II. The conduct by the authorities of the investigation (the diligence shown by them in dealing with the case and the manner in which they organised the investigation)

52. With respect to the organisation of the investigation in the criminal proceedings against the Applicant, the Commission has noted that the investigating judge, Dr. Leonhard, is one of the few investigating judges in Austria who specialise in financial criminal cases. When giving evidence as a witness before the Sub-Commission, Dr. Leonhard stated: "Stögmüller's case record was current at the same time as that of Rafael, in which the defendants were Rafael, Huber and Neumeister (1)..."

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(1) See the Commission's Report on Application No. 1936/63.

Both cases were endless... Stögmüller's case record now far exceeds 20,000 pages. Rafael's is no smaller. But as well as these two big ones there were other criminal cases current which I had to conduct as a result of the allocation of work practised in the Austrian courts." (1)

53. When asked by the Agent of the Respondent Government whether he considered that he could have concluded the investigation of the Stögmüller case more quickly if he had not had to conduct the investigation in the Rafael case at the same time, Dr. Leonhard replied: "The investigation in the Stögmüller case would no doubt have proceeded more quickly if I had not had the Rafael case. I should not like to say that it caused such a very great delay, but things would have gone more quickly. However, there would have been no effect on the length of detention pending trial." (2)

54. The Schedule submitted by the Respondent Government sets out the course of the investigation in the present case during the period of the Applicant's second detention from 25th August, 1961, until 26th August, 1963. Section 1 of the Schedule deals with the activity of the investigating judge, and Section 2 lists the applications filed by the Office of the Public Prosecutor. The Schedule is reproduced as Appendix III to the present Report.

55. The Respondent Government stated that, during the judicial investigation against the Applicant, which lasted from 1958 until 1965, ten accused and 179 witnesses were heard by the authorities. The investigating judge took written statements from the Applicant on the following days:

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(1) Verbatim Record of the hearing before the Sub-Commission on 20th July, 1966, page 3.

(2) . Ibidem page 16.

5. 3.1958	3. 2. 1964	8. 6.1964
10. 3.1958	4. 2. 1964	9. 6.1964
17. 3.1958	5. 2. 1964	16. 6.1964
21. 4.1958	7. 2. 1964	17. 6.1964
10. 2.1961	17. 2. 1964	29. 6.1964
26. 8.1961	18. 2. 1964	1. 7.1964
29. 8.1961	19. 2. 1964	14. 7.1964
28.12.1961	24. 2. 1964	15. 7.1964
11. 7.1962	25. 2. 1964	1. 9.1964
13. 7.1962	2. 3. 1964	2. 9.1964
16. 7.1962	3. 3. 1964	3. 9.1964
17. 7.1962	4. 3. 1964	8. 9.1964
18. 7.1962	9. 3. 1964	9. 9.1964
23. 7.1962	10. 3. 1964	6.10.1964
29. 5.1963	16. 3. 1964	27.10.1964
18. 6.1963	17. 3. 1964	28.10.1964
5. 7.1963	23. 3. 1964	3.11.1964
8. 7.1963	24. 3. 1964	4.11.1964
9. 7.1963	12. 5. 1964	9.11.1964
26. 8.1963	13. 5. 1964	2. 3.1965
22. 1.1964	25. 5. 1964	3. 3.1965
24. 1.1964	26. 5. 1964	10. 3.1965
27. 1.1964	1. 6. 1964	15. 3.1965
28. 1.1964	2. 6. 1964	16. 3.1965
29. 1.1964	3. 6. 1964	17. 3.1965
31. 1.1964	4. 6. 1964	18. 3. 1965

Thus the interrogations of the Applicant totalled 78 days. The statements comprised 1,050 typewritten pages. However, these "interrogation days" represented only those days on which completed statements were taken from the Applicant on particular facts. In addition there were about twice as many days on which the facts were discussed with the Applicant but the investigating judge only took shorthand notes. If these were included the total number of days on which the judge questioned the Applicant amounted to some 200 to 230. (1)

56. It appears from the Schedule (2) submitted by the Respondent Government that, during the Applicant's detention from 25th August, 1961, until 26th August, 1963, 67 witnesses were examined, either by the investigating judge or on commission:

- (a) Between 31st August and 28th December, 1961, 58 witnesses were questioned on some 37 business transactions.

(1) The Government's communication of 14th June, 1966 (Doc. D 7568), pages 2-3.

(2) See Appendix III.

- (b) Between 5th January and 1st February, 1962, the investigating judge heard, or received the statements of, 8 witnesses.
- (c) The record of the hearing of a further witness was received by Dr. Leonhard on 8th March, 1963.

57. When discussing the course of the investigation during the Applicant's detention from 1961 until 1963, his lawyer, Dr. Tuma, stated before the Sub-Commission with reference to the Schedule submitted by the Respondent Government: "You will see that the entry under 3rd July, 1962, reads: 'Letter of Ernst Stögmüller notifying the withdrawal of his complaint of 25/6/62'. This letter was preceded by a discussion between Dr. Leonhard, the investigating judge, and myself, followed immediately by a discussion between the Applicant and myself. In the discussion I had with the investigating judge, we made what might be called a 'gentlemen's agreement'. The investigating judge said: A start really must be made with the interrogations now; the matter must be dealt with quickly; then when the interrogations have been completed - meaning the interrogation of Mr. Stögmüller - he can be released from custody. The investigating judge went on, however, to say that it was advisable that all difficulties of a purely formal nature be disposed of so that he might have the file permanently at hand and be able to go ahead with the interrogation. It was therefore necessary that the complaint be withdrawn so as to avoid any need for the file to start circulating again. Perceiving the truth of this, I went to see Stögmüller in prison and advised him - he was rather irate because he had been in prison for almost a year without ever having been heard in any way on the main issue - to withdraw his complaint. This he then did and you will see that subsequently a series of interrogations took place ... The interrogation of Stögmüller ended on 23rd July, 1962. In those 10, 11 or 12 days, i.e. from 11th to 23rd July, he was questioned fairly thoroughly, but on only a very small part of the facts. Most of the accusations brought against him were not cleared up until after his release from custody ... I should like to point out once again that the conversation between the investigating judge and me is not to be considered as in any sense binding - but it is perhaps best described as a 'gentlemen's agreement' - and that, since difficulties had then evidently arisen in the course of interrogation, I took no further steps for almost a year." (1)

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(1) Verbatim Record of the hearing before the Sub-Commission on 1st October, 1965, pages 22-23.

With respect to the above submissions of the Applicant's lawyer, the investigating judge, Dr. Leonhard, stated before the Sub-Commission: "I wish to object to the passage: 'When the interrogations have been completed he can be released.' The detention has absolutely nothing to do with the interrogation ... I seem to remember that there was a discussion between Dr. Tuma and me, the object of which was that Stögmüller should cease his appeals so that we could get on with the substantive law work. If anyone wants to call this a gentlemen's agreement, I have no objection." (1)

58. As indicated above (2), the Applicant complained in the proceedings before the Commission that the investigating judge, Dr. Leonhard, had tried to use the Applicant's detention as a means of inducing him to make a confession. In this respect, he referred to a conversation which had taken place after his re-arrest on 25th August, 1961, between Dr. Leonhard and Mrs. Tuma, the wife of the Applicant's lawyer and manager of his office.

59. When giving evidence before the Sub-Commission, Mrs. Tuma was questioned on this allegation as follows:

The PRESIDENT: Would you please tell us the exact words spoken by the investigating judge ...

Witness TUMA: He expressed himself very briefly. He said that Stögmüller was a tough fellow, but that he (the investigating judge) would, without any doubt, succeed in "softening him up".

The PRESIDENT: Did you ask him in what way he would achieve this?

Witness TUMA: I did not have to: the investigating judge gave me examples from his earlier professional activities of how he had taken other persons into custody and had at the end of a year succeeded in prevailing upon them to confess.

The PRESIDENT: Did he mention specific cases? Did he, for example, mention any names?

Witness TUMA: He did mention names, but unfortunately ...

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(1) Verbatim Record of the hearing on 20th July, 1966, page 18.

(2) Paragraph 15 (b).

The PRESIDENT: Could you repeat that point. I asked whether the investigating judge gave specific examples and whether he said to you: I have brought others to their senses.

Witness TUMA: He did mention actual names. Unfortunately I did not attach any significance to them because I did not know that years later I would need these names. But he referred again and again to a certain Rafael and Huber.

The PRESIDENT: When you returned to your husband's office, did you make a point of informing your husband of this conversation?

Witness TUMA: Yes.

The PRESIDENT: Did you yourself consider it necessary then or later to put the conversation down in writing for subsequent reference?

Witness TUMA: Not really. I should say that, at the time, I did not expect or could not have expected that the detention would last so long.

...

Mr. FAWCETT: You said that you did not attribute any importance to the fact that names were mentioned. Did you attribute any importance to the conversation?

Witness TUMA: Perhaps I have been misunderstood. I did attach importance to it at the time. But I took no notes and can therefore no longer recall it.

Mr. FAWCETT: May I ask whether, in your office, you invariably made a written record of daily happenings; letters received, conversations, etc? Did you record all this everyday in writing?

Witness TUMA: Interviews and consultations are not normally recorded in writing. Whenever I have paid a call somewhere on business I report on it and the matter proceeds.

The PRESIDENT: I should like to ask you whether, after this conversation or in addition to this conversation we have just been speaking about, you had an opportunity to discuss the circumstances of Mr. Stögmüller's arrest with another judge or with the same investigating judge.

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Witness TUMA: During the subsequent period and up until Mr. Stögmüller's release I was in constant touch with both the investigating judge and the Public Prosecutor, and the Public Prosecutor himself assured me again and again that he had no interest in holding Mr. Stögmüller in custody, but that the investigating judge insisted on it.

The PRESIDENT: May I ask you if you had a conversation with the investigating judge during which he said to you that the detention could perhaps be terminated on certain conditions?

Witness TUMA: He did not use the word "conditions", but during the conversation he kept repeating: Let him confess and then he can go home anyway.

The PRESIDENT: It was the investigating judge who said this?

Witness TUMA: Yes.

The PRESIDENT: In the tête-à-tête conversation or was the Public Prosecutor present?

Witness TUMA: No, the Public Prosecutor was not present, I always spoke with him separately. He, too, asked me to urge Stögmüller to confess. Look - he emphasised again and again - he was a young man at the time of these offences and I would take that into account in appraising the sentence.

The PRESIDENT: The Public Prosecutor did not say to you that he personally considered detention necessary and was in favour of its continuation? According to what he said to you, it was the investigating judge who insisted on it?

Witness TUMA: Yes. (1)

60. After this interrogation by the Sub-Commission, the Agent of the Respondent Government put the following question to Mrs. Tuma: "You mentioned that during your conversation with the investigating judge he said he would, without any doubt, succeed in 'softening him up' as he had previously done with others. You then said that you could no longer recall individual names, but that he (the investigating judge) kept referring to a Rafael-Huber case. You recollected these two names therefore. Can you perhaps remember whether he was of the opinion that he had, by his alleged conduct, prevailed upon one or other of them, that is to say Rafael or Huber, to make a confession?" The witness replied: ". /.

(1) Verbatim Record of the hearing on 1st October, 1965, pages 18-20.

I recalled any names, I gave these two only because they were subsequently mentioned again and again by the investigating judge, in narrating other cases. But I did not say that these were the names he mentioned when he recounted from his earlier professional activities how he had, as he said, 'softened up' people." (1)

61. With reference to the statement of Mrs. Truma that she had not made a written record of her conversation with the investigating judge, the President of the Sub-Commission asked Dr. Tuma why he had not considered it necessary to make a written report or even seek redress by the means at his disposal. Dr. Tuma replied that he had not taken any such measures. The hearing continued as follows:

Mr. FAWCETT: I should like first of all to ask whether, at the time the complaint was withdrawn in July, 1962, the investigating judge made any suggestions to you or said to you that Stögmüller should confess.

Dr. TUMA: The question of a confession was not explicitly mentioned at the time. What was said was merely that the whole matter must be settled as expeditiously and comprehensively as possible. In that conversation the investigating judge said nothing explicitly about a confession.

Mr. FAWCETT: Did you at any time repeat to Mr. Stögmüller the report that your wife gave you of her conversations with the investigating judge regarding the confession?

Dr. TUMA: Not until Stögmüller had been released, as far as I can remember; it was just prior to the hearing before the Commission of Human Rights in (1964).(2)

62. The investigating judge, Dr. Leonhard, stated with respect to the evidence given by Mrs. Tuma: "Never in my life have I used the words 'tough fellow' or 'soften up'... I may say that (Mrs. Tuma) visited me frequently on various matters relating to Stögmüller... (These) visits did not give me over-much pleasure. Mrs. Tuma, who in herself is, beyond a doubt, charming and unobjectionable, had the disadvantage for me that, firstly, she is not a lawyer and, secondly, she was somewhat lengthy in her remarks ... it was not (the Public Prosecutor) but myself who finally wished to release (the Applicant) after his long period in detention. If the Public Prosecutor had

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(1) Ibidem pages 20-21.

(2) Ibidem pages 24-25.

wished to release him and I had opposed this at any time I would not have been entitled, under the Austrian Code of Criminal Procedure, to decide the matter ... Under the ... Code ... it must be drawn to the attention of anyone charged with a criminal offence that in the event of trial and conviction a confession constitutes an important extenuating circumstance ... There is no interdependence between detention pending trial and confession ... never in my life ... have I made extension or curtailment of detention dependent on a confession ... There is the exceptional case that I have just mentioned, danger of collusion. If a defendant denies the offence and I have to summons the witnesses I must, in order to avoid collusion, keep him in detention until I have heard them, so that he cannot influence them. If in such a case ... he makes a confession, then the danger of collusion falls away and I can release him ... I must make it quite clear that I did not say I had used detention in order to bring other suspects to make any kind of confessions. In particular I should like to observe that the reference to Rafael and Huber cannot be correct. For on the last day of his detention Rafael said exactly the same things as on the first day, and Huber utterly refused to say anything before the investigating judge." (1)

63. With regard to the allegation by the Applicant that the investigating judge, Dr. Leonhard, had tried to make use of the Applicant's detention as a means of inducing him to make a confession, the Commission does not attach weight to the above testimony of the witness, Mrs. Emilie Tuma, for the following reasons:

- (a) There is no statement in the testimony that the investigating judge made any such proposal to the Applicant himself; and the alleged conversations between the witness Tuma and the judge were not repeated to the Applicant until after his release.
- (b) No action was taken by the Applicant's lawyer, Dr. Tuma, in respect of the alleged conversation by way of challenge of the investigating judge.

(1) Verbatim Record of the hearing on 20th July, 1966, pages 9-12 and 19.

- (c) No written record was made afterwards of the alleged statements of Dr. Leonhard, which, according to witness Tuma, were repeated several times. Such a record could reasonably be expected if the alleged statements were to be made the basis of a serious charge.
- (d) The alleged statements were wholly denied by the investigating judge, who also refuted certain details in witness Tuma's evidence.

Chapter VII

The conduct of the judicial authorities concerned

- I. in dealing with applications for release pending trial
- II. in completing the trial

64. The applications and decisions concerning the question of the Applicant's release pending trial are set out in paragraphs 39 and 40 above.

65. The investigation against the Applicant began in 1957 and was concluded in 1966, when the case-file was transmitted to the Public Prosecutor. Under the Austrian Code of Criminal Procedure, the following steps lie between this stage of the proceedings and the rendering of a judgment by the competent court of first instance:

- (1) drawing up of the bill of indictment by the Public Prosecutor (Article 112);
- (2) Committal of the accused for trial (Articles 207-219);
- (3) Arrangement of the trial (Articles 220-227); and
- (4) Holding of the trial (Articles 228-279).

PART IIOPINION OF THE COMMISSION

66. The only issue before the Commission is the alleged violation of Article 5, paragraph (3), of the Convention (1) which provides that anyone arrested or detained in accordance with paragraph (1), subparagraph (c), of this Article "shall be entitled to trial within a reasonable time or to release pending trial".

Article 5, paragraph (1), states as follows:

"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 ;

..... "

67. With regard to the Applicant's allegation that his detention on remand violated Article 5, paragraph (3), the Commission has noted that he was eventually released pending trial. The Commission is unanimously of the opinion that this fact does not deprive it of its right to examine whether or not the period already spent by the Applicant in detention before his release was reasonable under Article 5, paragraph (3). (2)

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(1) See paragraph 10 above.

(2) The relevant submissions of the Parties are summarised in paragraphs 13 and 14 above.

68. According to the constant jurisprudence of the Commission, the term "reasonable time" in Article 5, paragraph (3), must be determined in the light of the concrete facts of each case. In the opinion of the Commission, the following elements, which it adopted in the cases of *Lubhoff* against the Federal Republic of Germany (Application No. 2122/64) and *Neumeister* against Austria (Application No. 1936/63), are relevant to the evaluation of the circumstances in a particular case:

- (1) The actual length of detention.
- (2) The length of detention on remand in relation to the nature of the offence, the penalty prescribed and to be expected in the case of conviction and any legal provisions making allowance for such period of detention in the execution of the penalty which may be imposed. In regard to this criterion, the following considerations enter into account: As the length of detention is to be examined in the light of the circumstances of each case, it follows necessarily that its appreciation may differ according to the nature of the offence concerned and the penalty prescribed and to be expected. However, in the determination of the relation between the penalty and the length of detention on remand, it is necessary to take into account the presumption of innocence as guaranteed by Article 6, paragraph (2), of the Convention. If the length of detention should approach too much the length of the sentence to be expected in the case of conviction, the principle of presumption of innocence would not be fully observed.
- (3) Material, moral or other effects on the detained person.
- (4) The conduct of the accused:
 - (a) Did he contribute to the delay or expedition of the investigation or trial?
 - (b) Was the procedure delayed as a result of the introduction of applications for release pending trial, appeals or other remedies taken by him?
 - (c) Did he request release on bail or offer other guarantees to appear for trial?

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- (5) Difficulties in the investigation of the case (its complexity in respect of facts or number of witnesses or co-accused, need to obtain evidence abroad, etc.).
- (6) The manner in which the investigation was conducted:
 - (a) the system of investigation applicable;
 - (b) the conduct by the authorities of the investigation (the diligence shown by them in dealing with the case and the manner in which they organised the investigation).
- (7) The conduct of the judicial authorities concerned:
 - (a) in dealing with applications for release pending trial;
 - (b) in completing the trial.

After the above elements have been established in a particular case, the conclusion will depend upon an evaluation of these elements in toto. Some of them may point to the conclusion that the length of detention was within reasonable limits, whereas other elements may indicate the contrary. The conclusion depends on their relative importance. This does not exclude the possibility that, in some cases, one single element is of decisive importance, even though other elements may indicate a different conclusion.

69. The Commission has applied the above criteria to the facts of the present case. The opinion of the Commission is set out below as to the conclusion to which each element points.

- (1) (As to the facts, see paragraphs 21-22 above.)

In the opinion of the Commission, consideration of the actual length of the Applicant's detention - two years - tends to the conclusion that it was unreasonable.

- (2) (As to the facts, see paragraphs 23-29 above.)

The Commission, having regard to the possible penalties and, in particular, to the minimum sentence which, under Austrian law, could be imposed on the Applicant if convicted, finds that consideration of this element also points to the conclusion that the length of detention was unreasonable.

- (3) (As to the facts, see paragraphs 30-35 above.)

The Commission considers that, apart from deprivation of freedom and its general repercussions, which are inherent in the mere fact of imprisonment, the Applicant has not presented evidence of any special effects of his detention which would in themselves tend to make it unreasonable.

- (4) (As to the facts, see paragraphs 36-40 above.)

The Commission has had particular regard to the Applicant's challenge of all judges of the circuit of the Court of Appeal of Vienna, which caused an interruption of the investigation from 7th November, 1962, until 4th March, 1963. In the opinion of the Commission, the Applicant, by introducing this challenge, went beyond a fair exercise of his right of petition and, consequently, this element points to the conclusion that the prolongation of his detention, which resulted from this challenge, was not unreasonable.

- (5) (As to the facts, see paragraphs 41-44 above.)

The Commission finds that the investigation of the present case was complex and that difficulties arose because it required the hearing of numerous witnesses in different parts of Austria. These circumstances, in the opinion of the Commission, point to the conclusion that the length of detention was reasonable.

- (6) (As to the facts, see paragraphs 45-63 above.)

The Commission considers that the system of investigation, as applied in the present case, caused some delay in the investigation against the Applicant as the investigating judge had to deal simultaneously with more than one very difficult and complex investigation. The Commission has noted the statement of the investigating judge, Dr. Leonhard, that this delay had no effect on the length of detention pending trial, but it finds it difficult to accept this statement. - This element therefore points to the conclusion that the length of detention was unreasonable.

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(7) (As to the facts, see paragraphs 64-65 above.)

The Commission has not established any facts on the basis of which it could conclude that, through the fault of the competent authorities, the proceedings concerning the Applicant's petitions for release pending trial were unduly prolonged. Considering that the Applicant has been released on 26th August, 1963, and that so far he has not yet been formally charged, the conduct of the authorities concerned in completing his trial is not relevant under Article 5, paragraph (3), of the Convention.

Conclusion

70. The Commission, having evaluated the above elements in toto, finds that those elements which point to the conclusion that the length of detention was unreasonable outweigh those which point to a different conclusion and considers, by eight votes against three votes, that Article 5, paragraph (3), of the Convention has been violated in the present case.

71. Concurring opinion of Mr. Balta

I agree with the majority of the Commission that Article 5, paragraph (3), of the Convention has been violated in the present case. However, with regard to the grounds on which this conclusion is based, I differ from the majority's opinion on the following points:

(1) With regard to the Applicant's first detention in 1958, I agree with the view that a violation of the Convention is excluded ratione temporis, but this only because that detention ended by release and, consequently, constitutes a separate fact.

(2) With regard to the general criteria for assessing the reasonableness of the length of detention on remand, as I have already pointed out in the cases of Wemhoff against the Federal Republic of Germany (Application No. 2122/64) and Neumeister against Austria (Application No. 1936/63), I have to make the following reservations:

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- (a) As to the formulation of criterion No. 2: In my view the penalty prescribed and to be expected can only be taken into account for assessing the gravity of the offence in concreto. The presumption of innocence does not allow the establishment of any relationship between the length of detention and the penalty prescribed and to be expected.
- (b) As to the formulation of criterion No. 4 (a) and (b): I cannot agree that the conduct of the accused can be considered as weighing against him in assessing the reasonableness of the length of detention because the accused cannot be required and expected to contribute to the expedition of the proceedings. It is the task of the judicial authorities to take the necessary measures to accelerate them.
- (c) As to the formulation of criterion No. 4 (c): According to the wording of Article 5, paragraph (3) (last sentence), it is for the judicial authorities to make a prisoner's release subject to an appropriate guarantee. Therefore the failure on the part of the prisoner to offer a guarantee cannot weigh against him.
- (d) As to the formulation of the criteria Nos. 5, 6 and 7: The amount of difficulty involved in the investigation cannot be a reason for prolonging the detention. It can be taken into account only under Article 6, paragraph (1), of the Convention.

72. Concurring opinion of Mr. Eustathiades

Having compared the elements in this case that suggest the general conclusion that there is no violation of Article 5, paragraph (3), of the Convention with those that indicate the opposite, it seems to me difficult to arrive at an overall evaluation that gives any certainty. It is also possible that such an evaluation may show that one single element is of such outstanding importance as to override the rest (see paragraph 68 in fine of the present Report). With regard to the actual length of detention, two years, one cannot deny that it makes its weight felt throughout the case. Still, the length of detention

in itself cannot, in my view - looking at the matter generally and not just with reference to this case - provide a sufficient basis for concluding that the period pending trial has not been "reasonable" within the meaning of Article 5, paragraph (3); however, it may well be possible to take it into consideration for the purpose in conjunction with some other "criterion" which would have to be applied with regard to the specific circumstances of each case (cf. my opinion in the Wemhoff case - paragraph 73 of the Commission's Report - where the previous jurisprudence of the Commission has been taken into account). I do not think it appropriate to take criterion No. 2 - I have thought it right to adopt the same position in other cases as well - for the purpose of deciding whether or not the period pending trial has been "reasonable" within the meaning of Article 5, paragraph (3), it being my view that "the penalty prescribed or to be expected should not ... be taken into account in judging the reasonableness of the length of detention as the Convention gives the individual an independent guarantee in this regard which must not be judged in relation to an element such as that referred to in criterion No. 2." (Extract from my opinion in the Wemhoff case, Report of the Commission, paragraph 73.) However, I cannot ignore the fact that the majority of the Commission has, in a general manner, adopted this criterion as relevant, and that it considered it in this case and took the view that application of it suggested that, seen from this angle, the length of detention was not reasonable. On the other hand, it cannot be denied that application of criterion No. 5 (the complexity of the case and the difficulties in its investigation) tends rather towards the conclusion that the length of detention is reasonable in view of the large number of witnesses to be heard in different parts of the country (see paragraph 69, No. 5, of the Commission's opinion). But the present case seems to be less complex than some others (see the cases of Wemhoff - Application No. 2122/64 - and Neumeister - Application No. 1936/63); furthermore, the Commission's examination of criterion No. 6 led it to conclude that the duration of detention was not reasonable. In view of all these considerations I cannot without very serious reservations associate myself with the Commission's general conclusion that Article 5, paragraph (3), has been violated in this case.

73. Dissenting opinion of Mr. de Gaay Fortman

I accept the criteria for the interpretation of the term "reasonable time" in Article 5, paragraph (3), of the Convention, which the Commission adopted in the cases of Wemhoff and Neumeister. Application of these criteria in the present case leads me, however, to a conclusion different from that of the Commission.

As the Commission states, the Applicant's challenge of all judges of the circuit of the Court of Appeal of Vienna, which caused an interruption of the investigation from 7th November, 1962, until 4th March, 1963, went far beyond a fair exercise of his right of petition. I would even go further and style this conduct of the Applicant as abuse of right (abus de droit). This wasted period of four months should therefore be deducted from the actual length of the detention. In my opinion the remaining period of 20 months cannot be considered as unreasonable, taking into account the complexity of the case (vide paragraph 69, No. 5 of the Commission's Report).

74. Dissenting opinion of Mr. Ermacora

According to the constant jurisprudence of the Commission, the term "reasonable time" in Article 5, paragraph (3), of the Convention must be interpreted in the light of the concrete facts of each case. In the cases of Wemhoff against the Federal Republic of Germany (Application No. 2122/64) and Neumeister against Austria (Application No. 1936/63), the Commission adopted certain criteria for the interpretation of the term "reasonable time". I consider these criteria as an appropriate measure. In applying them to the present case, however, I arrive at a conclusion which differs from the Commission's conclusions in the cases of Wemhoff and Neumeister and in the present case.

With respect to the actual length of the detention of the present Applicant (criterion No. 1), it is to be observed that a prolongation of four months was caused by his challenge of all judges of the circuit of the Court of Appeal of Vienna; by introducing this challenge, the Applicant abused his procedural rights. Consequently, we should deduct this period of four months from the two years of his detention when we examine whether or not the length of detention was reasonable. The period to be examined, therefore, is only 20 months. Still, consideration of this actual length of detention tends to the conclusion that it was unreasonable.

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A detention of 20 months, however, is not out of proportion to the nature of the offences allegedly committed by the Applicant and to the penalty prescribed and to be expected (criterion No. 2). In this respect the case differs from the cases of Wemhoff and Neumeister.

A further difference can be noted in respect of criterion No. 3: The detention of the present Applicant has not had any special effect on his family life or his professional and financial situation.

The conduct of the Applicant (criterion No. 4) was directed against the investigation. This is shown, in particular, by his letter of 5th February, 1963, to his lawyer, Dr. Tuma, which was submitted by the Agent of the Respondent Government and read out at the hearing before the Sub-Commission on 20th July, 1966 (Verbatim Record, pages 20-27; see also paragraphs 16 (c) and 38 of the present Report) The Applicant did not contribute to the expedition of the investigation but caused a delay of four months by challenging all judges of the circuit of the Court of Appeal (a challenge can also be introduced at a later stage, namely, during the trial). Finally, he failed to offer guaranties to appear for trial and to request release on bail in due course.

Thus, there are several subjective elements in this case which indicate that the length of the Applicant's detention was caused by his own behaviour and, further, that the detention did not have any special effect on his personal situation. The position of Stögmüller is, in my view, quite different from the position of Wemhoff and Neumeister. In the present case, an evaluation of three of the above-mentioned four criteria already points to the conclusion that the length of the Applicant's detention was "reasonable" within the meaning of Article 5, paragraph (3), of the Convention.

This conclusion is further supported by the application of criterion No. 5.

With regard to criterion No. 6, my opinion is the same as in the Neumeister case: I consider that the Austrian system concerning investigations was not fully applied so as to expedite the present investigation and to reduce the length of the Applicant's detention.

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In respect of criterion No. 7, I agree with the majority of the Commission.

-Having evaluated the above elements in toto, I find that those elements which point to the conclusion that the length of detention was reasonable outweigh those which point to a different conclusion. I consider therefore, that Article 5, paragraph (3), of the Convention has not been violated in the present case.

75. Dissenting opinion of Mr. Süsterhenn

As to criterion No. 1

As I explained fully in the Neumeister and Wemhoff cases; the question whether a period of detention pending trial is reasonable or unreasonable cannot properly be decided by reference to criterion No. 1 - the actual length of such detention. I should like to illustrate this by the following example: If someone is kept in detention for 5 ½ weeks for an offence for which the maximum sentence is six weeks' imprisonment, the detention is short, viewed in isolation. But despite its objective brevity it is unreasonably long in such a case, being almost equal to the maximum penalty laid down by law. I therefore maintain my opinion that the reasonableness or otherwise of the period of detention can only be decided in relation to the specific circumstances of the case.

These specific circumstances are indicated in criteria Nos. 2 - 7. "Criterion" No. 1 is not a standard, but a factor to be assessed in the light of the standards laid down in the other criteria.

The first appearance of "criterion" No. 1 in the Commission's decisions was in its report of 1st April, 1966, on Application No. 2122/64 by Wemhoff against the Federal Republic of Germany. On no previous occasion had the Commission even mentioned this "criterion", let alone based a decision on it. In support of this statement, I refer to the following decisions:

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Date of decision	Application	Length of detention	Substance of decision
22. 3. 58	297/57 X v. F.R.G.	5 months	manifestly ill-founded
8. 1. 59	222/56 X v. F.R.G.	8 months	manifestly ill-founded
2. 9. 59	347/57 Nielsen v. Denmark	2 years 5 months	<u>ratione temporis</u> and 6-months limit expired
4. 1. 60	530/59 X v. F.R.G.	18 months	manifestly ill-founded
3. 6. 60	653/59 X v. F.R.G.	3 months	manifestly ill-founded
13. 4. 61	892/60 X v. F.R.G.	2½ years	manifestly ill-founded
19. 12. 61	920/60 X v. F.R.G.	19 months	manifestly ill-founded
12. 3. 62	1103/61 X v. Belgium	3 weeks	manifestly ill-founded
4. 10. 62	1546/62 X v. F.R.G.	17 months	manifestly ill-founded
2. 3. 64	1625/62 X v. F.R.G.	15 months	manifestly ill-founded
7. 3. 64	1404/62	13 months	manifestly ill-founded
7. 7. 64	1729/62 X v. F.R.G.	18 months	manifestly ill-founded
8. 7. 64	2077/63 X v. F.R.G.	1 year	manifestly ill-founded
31. 5. 65	2219/64 X v. F.R.G.	18 months	manifestly ill-founded
30. 3. 66	2646/65 X v. F.R.G.	10 months	manifestly ill-founded

In all these decisions the Commission has simply applied criteria Nos. 2-7. It should be noted that the last of the decisions listed above was given on 30th March, 1966. Only two days later, on 1st April, 1966, criterion No. 1 - "the actual length of detention" - suddenly appears for the first time, in contrast to this long-established practice, like a "deus ex machina" in the Wemhoff report (Report on Application No. 2122/64, page 67). It is stated categorically in the Report, not a word of justification being given for it. In applying it in that specific case the Commission made the lapidary statement: "Consideration of the actual length of this detention - three years - tends towards the conclusion that it was unreasonable" (see page 68, paragraph 69 (1)).

In its conclusion (page 69) the Commission declared that, "having evaluated all these elements in toto in the circumstances of the present case", it gave "particular weight to the actual length of detention", and on this basis it affirmed a violation of Article 5, paragraph (3), of the Convention. For the sake of clarification I would remark again that the sudden discovery of this new "criterion" was contrary to long-established practice and was substantiated neither as a principle nor in its application to the specific case - and to this completely new "criterion" the Commission attached "particular weight".

This so-called "criterion" made its second appearance in the Commission's jurisprudence nearly two months later, in the report dated 27th May, 1966, on the Neumeister case (Report on Application No. 1936/63, page 68) - the Commission having four days previously, on 23rd May, given a decision on Application No. 2516/65 without regard to this "criterion", as shown in the following table:

Date of decision	Application	Length of detention	Substance of decision
1. 4. 66	2122/64 Wemhoff v. F.R.G.	3 years	violation found
23. 5. 66	2516/65 X v. F.R.G.	19 months	manifestly ill-founded
27. 5. 66	1936/63 Neumeister v. Austria	2 years 2 months	violation found
6. 2. 67	1873/63 X v. F.R.G.	20 months	manifestly ill-founded
7. 2. 67	2375/64 X v. F.R.G.	8 months	manifestly ill-founded
7. 2. 67	2772/66 X v. F.R.G.	15 months	manifestly ill-founded

In the Neumeister case, like that of Wemhoff, no attempt was made to justify "criterion" No. 1 in principle. Similarly, when applying it then it was stated, without any substantiation: "The Commission finds that consideration of this factor tends towards the conclusion that the length of detention, 26 months and 4 days, was unreasonable." (Report page 70, II/1) It is true that the conclusion on the Neumeister case (page 72), unlike that on the Wemhoff case, did not state specifically that "particular weight" was given to "criterion" No. 1. But examination of the manner in which criteria 2-7 were applied shows that criterion No. 1 played a particular important part in the opinion of the majority of the Commission. The situation in the Stögmüller case now before us (see pages 44-48 of the present Report) is the same as in the Neumeister and Wemhoff cases. Here too it will be remarked that no attempt whatever is made to justify either "criterion" No. 1 as such or its application to the specific case. In essence we have only the categorical statement: "Too much is too much".

Since "criterion" No. 1 was first stated and applied in the Wemhoff case, in the report of 1st April, 1966, the Commission has taken a series of further decisions - apart from the Neumeister case, which was handled in the same way as that of Wemhoff - on applications alleging violation of Article 5, paragraph (3). These are shown in the foregoing table. In none of them is this "criterion" even mentioned, let alone applied to the particular case in question, although in some of them "the actual length of detention" was in absolute terms very long. Indeed, in those cases, the Commission reverted to its practice previous to the Wemhoff report, that of treating the length of detention as a factor to be examined, only the considerations stated in criteria Nos. 2-7 being applied as yardsticks. This inconsistent attitude on the Commission's part cannot be justified by saying that "criterion" No. 1, which was not applied in those cases, was in fact taken into consideration "in the mind". To attempt to explain matters in this way would be incompatible with the duty placed on the Commission, and always performed by it, that when an application is declared inadmissible - that is to say in those very cases in which the Commission takes the final decision, thus creating a situation of res judicata - it should take pains to prove to the applicant that all the factors set forth by him have been conscientiously examined.

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It does not exactly indicate consistency of practice if the Commission in fifteen decisions considers "criterion" No. 1 as non-existent, then, in the Wemhoff and Neumeister decisions, attaches decisive importance to it, then again, in four further decisions, treats it as not even worthy of mention and now, in the Stögmüller case, once more finds "the actual length of detention" to be of significance.

However, assuming it to be permissible, and in accordance with the rules of logic, to judge the length of detention by itself, the detention cannot be thought unreasonably long in the case before us, even by this improper criterion. On this point I associate myself with Mr. Ermacora's remarks on criterion No. 1 in his dissenting opinion.

As to criterion No. 2

Under Article 184 of the Austrian Criminal Code the minimum sentence for the offences with which the Applicant is charged is five years and the maximum ten years', severe imprisonment (see paragraph 25 above). It is true that Article 265a of the Code of Criminal Procedure makes allowance for extenuating circumstances in an offender's favour. In such a case the minimum sentence may be reduced to six months. But I think it is totally inappropriate to take the figure of six months for the purpose of deciding of whether or not the Applicant's detention was unreasonably long in relation to the likely sentence. It is far more to the point to remember that the Applicant is charged with many serious offences which are alleged to have caused considerable damage to a large number of persons, many of them in desperate straits. This damage is said to have been the consequence of a mass of cunning operations spread over the whole of Austria and revealing a high degree of criminal intent on the Applicant's part. It seems unlikely that in such a case there can be thought to be extenuating circumstances in the Applicant's favour such as would open the possibility of a minimum sentence of six months. This may also be seen from the fact that even the Applicant's lawyer has stated that his experience suggests that a sentence of two to three years can be expected in the event of conviction (see Verbatim Record of the oral hearing before the Commission on 1st October, 1964, page 16).

Moreover, I think it is fundamentally open to doubt whether the Commission, as an international body, is entitled to give consideration to its own opinions or estimates of the likely penalty rather than to the considered views of national courts. In previous decisions the Commission has constantly taken the view that it is not within its competence to consider applications relating to sentences passed, since to do so would be to assume the function of a fourth instance. In my opinion, this consideration is also relevant if the Commission, in the course of considering the length of detention pending trial, is to deal with the question of the sentence likely to be imposed on the Applicant. If, of its own volition the Commission enters upon an examination of this question and reaches a different forecast of the likely sentence from that given by the national courts, which in rendering decisions on the length of detention have to take Article 5, paragraph (3), of the Convention, that is to say the question of what is a reasonable period of detention, into consideration, then the Commission cannot, if it amends the estimate of national courts, merely refer in abstract terms to a theoretically possible minimum sentence. If the Commission is to act as a corrector of decisions by national courts it must take into account all factual circumstances relating to the act and the doer, in other words, all the subjective and objective facts of the case in so far as they may be relevant to a decision on the likely sentence.

If the Commission condemns a State and reproaches its courts with a breach of the Convention the condemnation and reproach must be thoroughly substantiated.

I do not think it permissible for the Commission to examine the sentence passed or likely to be passed unless there is obvious perversion of justice, e.g. if members of a racial, national or religious minority are, obviously without foundation or for ridiculously trifling offences, sentenced to long terms of imprisonment, as happened, for instance, under the Third Reich.

Quite apart from these observations of principle concerning the Commission's competence to substitute its own opinion on the likely sentence for that of the competent national courts, I consider that in this particular case the length of detention was not unreasonable in view of the sentence of five to ten years laid down by law.

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As to criterion No. 3

I agree with the Commission that detention has not had any particular negative effects on the Applicant beyond what is normal.

As to criterion No. 4

I agree with the Commission that the Applicant, by challenging all the judges of the Vienna circuit, himself contributed to the prolongation of his detention.

In this connection reference should also be made to the Applicant's letter to his Counsel, revealing that his tactics were designed to neutralise the investigating judge by obstruction (see paragraph 38 of the present Report). I cannot agree that the Commission should not take this letter into consideration. The Commission received the letter officially from the Austrian Government; the Applicant's lawyer agreed that it should be read out and acknowledged it as genuine. In my view it is inconsistent with the proper standards of procedure to consider the letter as non-existent in such circumstances and to decline to reproduce it in the establishment of the facts or take it into account in forming an opinion (cf. ibidem).

As to criterion No. 5

I agree with the Commission that the investigation demanded considerable pains, in particular personal interrogation, by the investigating judge himself, of a large number of witnesses throughout Austria.

As to criterion No. 6

The fact that the investigating judge had to deal with other complicated cases in addition to the case in question cannot be held against the Austrian judicial authorities, and thereby the Republic of Austria, in the sense that simultaneous work on several involved cases caused culpable delay in dealing with this case, thereby prolonging detention unreasonably.

Dr. Leonhard, the investigating judge, who has been heard as a witness, has himself denied this in so many words.

Furthermore, the Austrian Government has explained that the assignment of a criminal case to a particular investigating judge is determined by general considerations prescribed by law, so that no-one can, as a result of any manipulation, be removed from the jurisdiction of his lawful judge. These formal requirements, which ensure that every person charged with an offence is examined by his lawful judge, are rigid by their very nature, and in the event of coincidence of unfortunate circumstances may no doubt place a heavy burden on the judge or another. But this must be accepted for the sake of the principle that everyone is entitled to be heard by his lawful judge. Thus there can be no question of any breach of duty by Austria in its judicial administration.

As to criterion No. 7

I agree with the Commission that no reproach can be made against the responsible authorities in respect of their handling of the complaints against detention.

Conclusion:

If one leaves out of account criterion No. 1, which is inadmissible under the rules of logic and conflicts with the practice established in the course of many years previously and subsequently resumed, criteria Nos. 2 to 7 indicate clearly that there is no violation of Article 5, paragraph (3), of the Convention.

Secretary to the European
Commission of Human Rights

Vice-President of the European
Commission of Human Rights

(A. B. McNULTY)

(C. Th. EUSTATHIADES)

A P P E N D I X I

HISTORY OF PROCEEDINGS

<u>Item</u>	<u>Date</u>	<u>Note</u>
Examination of admissibility (Commission)		
Introduction of Application	1st August, 1962	
Registration of Application	14th September, 1962	
Receipt of further communication from Applicant	6th February, 1963	
Examination by group of three members (Rules 34, 45 of Rules of Procedure)	24th May, 1963	MM. Sørensen, Ermacora and Fawcett
Examination by Commission	20th June, 1963	MM. Petrén, Eustathiades, Beaufort, Süsterhenn, Mme. Janssen-Pevtschin, MM. Sørensen, Ermacora, Castberg, Fawcett, Maguire, Triantafyllides, Welter and Balta.
Receipt of Government's observations on admissibility	28th August, 1963	
Receipt of Applicant's observations on admissibility	17th September, 1963	
Receipt of further observations from Government	10th December, 1963	

Item	Date	Note
Commission's deliberations	2nd March, 1964	
Receipt of further observations from Government	8th June, 1964	
Partial decision on admissibility	7th July, 1964	As to members present, see Appendix II (page 70)
Hearing of the Parties (Rule 46 of Rules of Procedure) and final decision on admissibility	1st October, 1964	As to members present, see Appendix II; Parties represented: Applicant by Dr. O. Tuma, Government by Dr. W. Pahr and Dr. B. Schmidt
Ascertaining of facts (Sub-Commission)		
Establishment of Sub-Commission after appointment of member by each Party	16th December, 1964	<u>Members:</u> MM. Sigurjonsson (appointed by Applicant), Ermacora (appointed by Government), Fawcett, Sørensen, Balta, Mme. Janssen-Pevtschin and Mr. Maguire. <u>Substitute members:</u> MM. Eustathiades, Castberg, Welter, Süsterhenn, Sperduti, Beaufort, Triantafyllides and Petréu.

<u>Item</u>	<u>Date</u>	<u>Note</u>
Receipt of Applicant's pleading on merits (Rules 47, 48 of Rules of Procedure)	16th November, 1964	
Receipt of Government's pleading on merits	3rd March, 1965	
Sub-Commission's deliberations	27th April, 1965	Mme. Janssen-Pevtschin, MM. Ermacora, Sørensen, Fawcett, Maguire, Balta and Castberg
Receipt of further observations from Government	14th June, 1965	
Sub-Commission's deliberations	8th July, 1965	MM. Sørensen, Ermacora, Fawcett, Balta, Castberg, Triantafyllides and Welter
Receipt of Government's schedule	6th September, 1965	See Appendix III
Sub-Commission's deliberations	29th and 30th September and 1st October, 1965	Mme. Janssen-Pevtschin, MM. Sigurjonsson, Ermacora, Sørensen, Fawcett, Balta and Eustathiades, members; MM. Castberg and Welter, supplementary members.

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<u>Item</u>	<u>Date</u>	<u>Note</u>
Hearing of Parties and witness (Rules 53 <u>et seq.</u> of Rules of Procedure)	30th September and 1st October, 1965	As to members present, see above; Parties represented: Applicant by Dr. O. Tuma, Government by Dr. E. Nettel, Dr. W. Pahr, and Dr. B. Schmidt.
Sub-Commission's deliberations	15th December, 1965	Mme. Janssen-Pevtschin, MM. Ermacora, Sørensen, Fawcett, Balta, Castberg and Welter.
Sub-Commission's deliberations	12th February, 1966	Mme. Janssen-Pevtschin, MM. Ermacora, Sørensen, Fawcett, Balta, Castberg and Welter.
Commission's decision on Applicant's request for free legal aid	12th February, 1966	Mme. Janssen-Pevtschin, MM. Sørensen, Ermacora, Castberg, Sperduti, Fawcett, Welter, Balta and O'Donoghue.
Sub-Commission's deliberations	20th May, 1966	Mme. Janssen-Pevtschin, MM. Ermacora, Sørensen, Fawcett, Maguire, Balta and Eustathiades; members; Mr. Welter, supplementary member.

Item	Date	Note
Sub-Commission's deliberations	15th July, 1966	MM. Fawcett, Ermacora, Balta, Maguire, Castberg, Süsterhenn and Sperduti.
Commission's decision on Applicant's second request for free legal aid	15th July, 1966	MM. Petrén, Süsterhenn, Ermacora, Castberg, Sperduti, Fawcett, Triantafyllides, Balta, de Gaay Fortman and Delahaye.
Sub-Commission's deliberations and hearing of Parties and witness	20th July, 1966	Mme. Janssen-Pevtschin, MM. Sigurjonsson, Ermacora, Sørensen, Fawcett, Balta and Eustathiades, members; MM. Castberg, Welter, Süsterhenn, Sperduti, Petrén and de Gaay Fortman, supplementary members; MM. O'Donoghue and Delahaye, observers.
Sub-Commission's deliberations	26th and 27th September, 1966	Mme. Janssen-Pevtschin, MM. Sigurjonsson, Ermacora, Fawcett, Balta, Maguire and Süsterhenn.
Adoption of Sub-Commission's Report (except part concerning friendly settlement).	27th September, 1966	As to members present, see above.

<u>Item</u>	<u>Date</u>	<u>Note</u>
Discussion on friendly settlement	18th November, 1966	Mr. Eustathiades; Government represented by Mr. Pahr.
Receipt of communication from Applicant	5th December, 1966	
Sub-Commission's deliberations	12th December, 1966	Mme. Janssen-Pevtschin, MM. Ermacora, Sørensen, Fawcett, Balta, Eustathiades and Castberg, members; MM. Welter and Süsterhenn, supplementary members; MM. O'Donoghue and Delahaye, observers.
Discussion on friendly settlement	13th December, 1966	Mme. Janssen-Pevtschin, Government represented by MM. Nettel and Pahr.
Adoption of Part III of Sub-Commission's Report (friendly settlement)	13th December, 1966	Mme. Janssen-Pevtschin, MM. Ermacora, Sørensen, Fawcett, Balta, Eustathiades and Castberg, members; MM. Welter and Süsterhenn, supplementary members; MM. O'Donoghue and Delahaye, observers.

<u>Item</u>	<u>Date</u>	<u>Note</u>
<u>Further examination of Application (Commission)</u>		
Commission's deliberations	14th December, 1966	MM. Eustathiades, Süsterhenn, Mme. Janssen-Pevtschin, MM. Sørensen, Ermacora, Castberg, Fawcett, Welter, Balta and O'Donoghue, members; Mr. Delahaye, observer.
Commission's deliberations	8th and 9th February, 1967	MM. Eustathiades, Süsterhenn, Mme. Janssen-Pevtschin, MM. Sørensen, Ermacora, Sperduti, Fawcett, Maguire, Welter, Balta and de Gaay Fortman, members; Mr. O'Donoghue, observer.
Adoption of Commission's Report	9th February, 1967	As to members present, see above.

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