AS TO THE ADMISSIBILITY OF

Application No. 29356/95
by Hugo BLUMENTHAL
against Switzerland

The European Commission of Human Rights (First Chamber) sitting in private on 18 January 1996, the following members being present:

MM. C.L. ROZAKIS, President
S. TRECHSEL
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 16 October 1995 by Hugo Blumenthal against Switzerland and registered on 23 November 1995 under file No. 29356/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant, a Swiss citizen born in 1941, is a businessman residing at Bad Ragaz in Switzerland.

On 16 April 1986 the Federal Banking Commission (Eidgenössische Bankenkommission) filed a criminal report against the applicant on suspicion inter alia of professional fraud, disloyal management, negligent bankruptcy and the suppression of documents. The applicant, who was the responsible agent (Geschäftsführer) of the Euroinvestor foundation in Vaduz in the Principality of Liechtenstein was in particular suspected of having induced, by means of misleading information, 867 investors to pay money into trust accounts of the Euroinvestor which in reality had been used for stock exchange and foreign exchange speculations.

Following first investigations in Switzerland and Liechtenstein the proceedings were taken over by the Zurich District Attorney's Office (Bezirksanwaltschaft) on 2 October 1987. On 9 August 1988 the District Attorney's Office requested the Liechtenstein authorities to take over the investigations. The Liechtenstein Public Prosecutor's

Office (Staatsanwaltschaft) replied on 14 December 1988 that it had requested the investigating judge of the Regional Court (Landgericht) of Liechtenstein to institute criminal proceedings against the applicant and other persons on the basis of the facts established by the Zurich authorities.

In view of the proceedings in Liechtenstein the Zurich District Attorney's Office temporarily suspended the proceedings in Switzerland on 6 March 1989.

On 30 January 1990 the Government of the Principality of Liechtenstein ordered the dissolution of the Euroinvestor foundation in the course of which further charges were raised against the applicant. The company's bankruptcy was ordered on 16 May 1990.

On 30 March 1990 the Zurich authorities issued an international warrant of arrest against the applicant. Following a television broadcast which referred to the applicant's case he was arrested on 14 January 1991 in France.

On 31 January 1991 the Liechtenstein authorities requested the Zurich authorities to take over the criminal proceedings instituted against the applicant. This was confirmed on 22 May 1991 by the Zurich authorities.

Meanwhile, the applicant was extradited to Switzerland on 11 April 1991 where he was detained on remand.

On 16 April 1991 the applicant requested his release from detention on remand. Later, he contested a further decision of 23 May 1991 to prolong his detention on remand; his appeal was dismissed by the Zurich Court of Appeal (Obergericht) on 14 June 1991 and in last resort by the Federal Court (Bundesgericht) on 16 November 1991.

On 18 October and 10 December 1991 the Zurich authorities also took over criminal proceedings pending, respectively, before the Public Prosecutor's Offices of Tübingen and Ravensburg in Germany.

The applicant's further request for release from detention was dismissed, upon appeal, by the Indictment Chamber on 6 February 1992. On 15 April 1992 the applicant was released from detention on remand.

On 23 February 1992 the Zurich District Attorney's Office indicted the applicant. His subsequent appeal was declared inadmissible on 29 April 1993 by the Zurich Court of Appeal and on 25 June 1993 by the Federal Court.

On 14 October 1993 the Zurich District Court (Bezirksgericht) sentenced the applicant on account of, inter alia, professional fraud, disloyal management, negligent bankruptcy and the suppression of documents to forty months' imprisonment and a fine of 20'000 SFr.

Upon appeal the Zurich Court of Appeal on 28 June 1994 increased the sentence to 54 months' imprisonment. His plea of nullity (Nichtigkeitsbeschwerde) was dismissed by the Court of Cassation (Kassationsgericht) of the Canton of Zurich on 24 January 1995.

The applicant filed a further plea of nullity with the Federal Court in which he complained that the Swiss courts lacked jurisdiction in his case as the European Extradition Agreement had been breached; he also complained of the punishment. The Federal Court dismissed the plea of nullity on 4 April 1995, the decision being served on 28 April 1995.

In its decision the Federal Court found that the applicant's complaint about the extradition proceedings in Switzerland was inadmissible as he had not complied with the formal requirements for

filing the plea of nullity. Insofar as the applicant complained about the extradition from France, the Court found that it was not competent to examine French law. The Court then examined, and eventually confirmed, the sentence imposed by the Court of Appeal.

COMPLAINTS

1. Under Article 3 of the Convention the applicant complains that the manner in which he was treated as a prisoner was degrading.

2. He also complains that, contrary to Article 5 para. 3 of the Convention, the District Attorney, who remanded him in custody, also indicted him.

3. The applicant complains under Article 6 para. 1 of the Convention that he should not have been indicted as his extradition was unlawful.

4. Also under Article 6 para. 1 of the Convention the applicant complains of the length of the proceedings.

5. Further under Article 6 para. 1 of the Convention the applicant complains that the courts disregarded certain essential facts.

6. The applicant also complains that the manner in which his case was shown on television breached Article 6 para. 2 of the Convention.

7. Under Article 6 para. 3 (b) the applicant complains that he was not informed of the institution of criminal proceedings against him.

THE LAW

1. The applicant complains of the length of the criminal proceedings instituted against him. He relies on Article 6 para. 1 (Art. 6-1) of the Convention which states, insofar as relevant:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time ..."

The proceedings to be examined under Article 6 para. 1 (Art. 6-1) of the Convention commenced on 16 April 1986 when the Federal Banking Commission filed a criminal report against the applicant. They ended on 28 April 1995 when the Federal Court's decision of 4 April 1995 was served on the applicant.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of this complaint to the respondent Government.

2. The applicant also raises various complaints under Articles 3, 5 and 6 paras. 1, 2 and 3 (b) (Art. 3, 5, 6-1, 6-2, 6-3-b) of the Convention.

Under Article 26 (Art. 26) of the Convention the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

Insofar as the applicant complains of his treatment as a prisoner, of the functions of the Zurich District Attorney, and of the unfairness of the proceedings before the Zurich authorities, he has not shown that he obtained a decision on these complaints by means of a public law appeal before the Federal Court.

Insofar as he complains under Article 6 para. 1 (Art. 6-1) of the Convention that he should not have been indicted as his extradition was

unlawful, and even assuming that in this respect an issue arises under Article 6 para. 1 (Art. 6-1) of the Convention, the Commission notes that in its decision of 4 April 1995 the Federal Court declared this complaint inadmissible as the applicant had not complied with the formal requirements for filing the plea of nullity. However, there is no exhaustion of domestic remedies where a domestic appeal is not admitted on account of a procedural mistake (see No. 6878/75, dec. 6.10.76, D.R. 6 p. 79).

It follows that the applicant has not complied with the requirement as to the exhaustion of domestic remedies, and his application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint concerning the length of the proceedings; and

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)