AS TO THE ADMISSIBILITY OF

Application No. 17208/90
by Rudolf HANNAK
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 13 October 1993, the following members being present:

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

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 3 August 1990 by Rudolf HANNAK against Austria and registered on 5 November 1990 under file No. 17208/90;

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

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they have been submitted by the parties, may be summarised as follows:

The applicant, born in 1933, is an Austrian national and resident at Wels. Before the Commission he is represented by Mr. G. Kusatz, a lawyer practising at Wels.

A. Particular circumstances of the case

The applicant's submissions concern different sets of proceedings.

a. Criminal proceedings against the applicant

On 1 December 1981 criminal investigations were started against the applicant and others on the suspicion of fraud in the context of the insolvency and bankruptcy of a firm. In 1984 the investigations were extended to further charges of fraudulent conversion committed until the beginning of 1984. In these proceedings the applicant was assisted by counsel.

On 4 April 1984 the Wels Regional Court (Kreisgericht) ordered the applicant's detention on remand on the grounds of a danger of his absconding and risk of repetition of the criminal offences concerned. On 5 April 1984 the applicant was questioned upon the charges against

him.

On 13 April 1984 the Judges' Chamber (Ratskammer) at the Wels Regional Court decided to prolong the applicant's detention on remand. His appeal was dismissed in May 1984.

On 20 April 1984 the Investigating Judge instructed the expert H. to prepare an opinion relating to the applicant's business transactions.

On 8 June 1984 the Judges' Chamber ordered the applicant's continued detention on remand.

On 19 June 1989 the applicant was transferred to the closed ward (Inquisitenabteilung) of a Linz hospital.

On 5 July 1984 the Linz Court of Appeal (Oberlandesgericht) ordered the applicant's further detention on remand. It confirmed in particular that there was a reasonable suspicion against the applicant, in accordance with S. 180 para. 1 of the Austrian Code of Criminal Procedure (Strafprozeßordnung).

On 9 August 1984 the Wels Regional Court ordered the applicant's further detention on remand. The Regional Court, having regard to a medical expert opinion concerning various health problems suffered by the applicant, found that there was still a danger of his absconding as well as risk of repetition of the criminal offences which could not be prevented by other means.

On 30 August 1984 the Linz Court of Appeal, upon the applicant's appeal (Haftbeschwerde), ordered his release from detention on remand on the condition that he promised not to abscond pending the criminal proceedings against him, or leave his place of residence without permission of the investigating judge, that he promised not to obstruct the course of the criminal investigations against him, that he reported once a month to the investigating judge, that his passport was provisionally taken away and that he had to give bail of AS 300,000. The Court of Appeal referred to S. 180 para. 5 and SS. 190 to 192 of the Code of Criminal Procedure. It considered in particular the length of the applicant's detention on remand at that stage and his state of health.

On various occasions in 1984 witnesses were questioned. Furthermore, in November and December 1984 the investigations were twice extended to cover further charges brought against the applicant.

On 24 April 1985 nineteen banking institutes and nine firms involved in business transactions with the applicant were requested to provide the expert H. with all necessary information.

On 10 September 1985 the Wels Regional Court dismissed the applicant's application to have his passport handed back. His appeal remained unsuccessful.

On 2 February 1986 the expert H. submitted his opinion, which comprised several volumes. He filed a fee note concerning more than two thousand working hours. Following successful appeals by the applicant and a co-accused, the expert delivered a break-down of his services, and his fees were again fixed. The applicant's further appeal remained unsuccessful.

In June 1986 the proceedings were extended to further charges. The applicant's appeals in this respect were to no avail.

On 6 August 1986 the Judges' Chamber at the Wels Regional Court lifted the decision concerning the applicant's passport.

In May, June, July and September 1986, witnesses were heard.

On 23 December 1986 the Judges' Chamber confirmed that the other restrictions imposed upon him were to continue. His appeal was rejected by the Linz Court of Appeal on 27 February 1987.

On 15 April 1987 the preliminary investigations were terminated.

On 6 July 1987 the Wels Public Prosecutor's Office (Staats-anwaltschaft) preferred the indictment (Anklageschrift) against the applicant and his co-accused.

On 1 February 1988 the Linz Court of Appeal partly granted the applicant's appeal against the indictment. The major part of the indictment was confirmed.

On 30 May 1988 the Public Prosecutor's Office requested the Wels Regional Court to transfer the proceedings to the Vienna Regional Court on the ground that the applicant had indicated his intention to change his place of residence and joined a medical certificate according to which he was not fit to travel from Vienna to Wels to attend the trial. The case was transferred to the Vienna Regional Court on 5 August 1988.

On 22 June 1989 the trial was scheduled for the period between 5 September and 1 December 1989. The applicant's repeated request to terminate the restriction imposed upon him in 1984 was dismissed.

On 7 July 1989 the Vienna Regional Court appointed the medical expert J. to prepare an opinion on the applicant's capacity to attend the trial. The opinion was delivered on 11 August 1989.

On 25 September 1989 the Vienna Prosecutor's Office requested that the proceedings be transferred to the Linz Regional Court on the ground that the applicant eventually did not move. The transfer was ordered accordingly by the Supreme Court (Oberster Gerichtshof) on 18 December 1989.

On 27 November 1990 the medical expert J. filed a further opinion on the applicant's capacity to attend the trial.

The trial against the applicant started before the Linz Regional Court on 18 December 1990. It comprised altogether fifty-five hearings.

On 15 January 1991 the Regional Court lifted the further restrictions imposed upon the applicant on 30 August 1984.

At the hearing of 29 May 1991 the applicant's counsel challenged the expert H. for bias on the ground that he had also acted as expert in the context of bankruptcy proceedings concerning the applicant. Thus there was a conflict of interests. The motion was dismissed, and his further motions in this respect in a decision by the Regional Court of 10 July 1991 likewise.

On 5 June 1991 the Linz Court of Appeal ordered the applicant's detention on remand.

On 5 September 1991 the Linz Regional Court convicted the applicant of fraud on numerous counts, fraudulent conversion, fraudulent bankruptcy, false testimony, and sentenced him to seven years' imprisonment. A co-accused was also convicted of fraud and fraudulent bankruptcy and sentenced to eighteen months' imprisonment. The written judgment, comprising 692 pages, was served upon the applicant's counsel on 11 December 1991.

The applicant announced a plea of nullity (Nichtigkeits-beschwerde) and an appeal (Berufung) against sentence, and submitted

the reasons on 7 January 1992.

The applicant was released from detention on 9 April 1992.

On 26 November 1992 the Supreme Court quashed the Linz Regional Court's judgment of 5 September 1991 regarding numerous counts of fraud, fraudulent bankruptcy and fraudulent conversion. The case was, to this extent, sent back to the Linz Regional Court. The Supreme Court confirmed the finding of the applicant's guilt as regards fraudulent bankruptcy on two counts and false testimony on two counts. The decision on further legal issues raised in the applicant's plea of nullity and upon the Public Prosecutor's plea of nullity was postponed in order to conduct a public hearing on these matters. The Supreme Court based its decision to quash the major part of the Regional Court's judgment upon the consideration that the expert H., who had also acted as expert in the context of bankruptcy proceedings, had been biased. The judgment was served on 3 December 1992.

On 17 December 1992 the Supreme Court, following a hearing, dismissed the remainder of the applicant's plea of nullity and the plea of nullity lodged by the Public Prosecutor's Office. The judgment was served on 29 January 1993.

The new trial before the Linz Regional Court was fixed to open on 9 March 1993. This decision was taken by a judge who had participated in the judgment of 5 September 1991. Following a successful obection lodged by the applicant with the Linz Court of Appeal, his case was assigned to another judge at the Linz Regional Court.

On 14 April 1993 the Linz Court of Appeal, upon request of the Linz Public Prosecutor's Office dated 10 March 1993, transferred the criminal proceedings against the applicant to the Wels Regional Court, where the proceedings are still pending.

b. Official liability proceedings

On 15 June 1984, in the course of his detention on remand at the prison of the Wels Regional Court, the applicant suffered an accident.

The applicant gives the following account of the events: In the early morning, he was short of breath and climbed a stool in order to open the window of his cell, he thereby fell and suffered various injuries at his left shoulder. As he first did not recognise the seriousness of his injuries, he only informed the prison guards in the late afternoon. The prison doctor had already left at the time in question, and it was agreed that, if necessary, he would be brought to hospital the next day. For technical reasons, he was only brought to hospital the day after. At the hospital, he received a bandage and was sent back to prison. On 18 June 1984 his pain got worse and he asked to be brought to hospital again. He was brought to hospital on 19 June and was operated on 22 June 1984. Four days later, he was sent back to prison. The vibrations in the prison car allegedly loosened the bandage of his shoulder and caused pain and complications.

In 1985 the applicant, represented by counsel, instituted official liability proceedings (Amtshaftungsklage) before the Linz Regional Court against the Republic of Austria for damages of AS 70,000 as well as any future damages in connection with an accident which he suffered during his detention on remand on 15 June 1984. He claimed that, having regard to his bad state of health, his detention on remand in a prison cell had been unlawful, that he did not receive appropriate medical treatment of the injuries resulting from the accident and that, after his operation, he should not have been driven back to prison in a normal car.

On 9 September 1986 the Linz Regional Court ordered the defendant

to pay the applicant AS 70,000, and stated the defendant's liability in respect of all future damages resulting from the applicant's insufficient medical treatment after the applicant's operation on 22 June 1984. The applicant's claims relating to the alleged unlawfulness of his detention were rejected.

The Regional Court based its findings on the above account given by the applicant. The Regional Court considered in particular that the fall of the applicant, who had never informed the prison guards of any problems in opening the window of his cell, constituted an accident outside the responsibilities of the prison authorities. The delay in taking him out to hospital after the accident were due to his indications as to the seriousness of his injuries. The prison guards could not recognise any urgency in this respect. As from 17 June 1984 all measures had been taken promptly. However, the applicant had not been carefully brought back from the hospital to the prison. Moreover, either due to negligence on the part of the medical staff at the hospital or of the prison authorities, he had not rested in bed. Thus complications had arisen. The Regional Court proceeded in particular from a medical expert opinion.

On 23 January 1987 the Linz Court of Appeal, upon the defendant's appeal, confirmed the Regional Court's judgment so far as it had dismissed the applicant's claims. As regards the remainder it quashed the judgment and sent the case back to the Regional Court. The applicant's appeal was dismissed. The Court of Appeal found in particular that the Regional Court had failed to hear the prison doctor as witness in respect of the applicant's medical treatment at prison after his operation. Furthermore, the medical expert had not made any indications to what extent the applicant's transport in a normal prison car had increased the risk of complications.

On 13 May 1987 the Supreme Court dismissed the applicant's appeal on points of law (außerordentliche Revision).

On 9 August 1988 the Linz Regional Court dismissed the applicant's request for free legal aid and his request to join these proceedings with further official liability proceedings concerning the opening of bankruptcy proceedings against him. The applicant's appeal (Rekurs) regarding this matter was dismissed by the Linz Court of Appeal on 14 December 1988.

On 22 August 1988 the Linz Regional Court dismissed the applicant's liability action. The Regional Court, having taken further evidence, found in particular that the treatment of the applicant's injuries had been altogether made in time and skilfully. Detrimental effects of the applicant's transport in a normal prison car could be excluded. The applicant had, therefore, failed to prove incorrect medical treatment subsequent to his accident.

On 23 January 1990 the Linz Court of Appeal dismissed the applicant's appeal (Berufung). The Court of Appeal did not grant leave to appeal on points of law (ordentliche Revision) under S. 500 para. 2 (3) of the Code of Civil Procedure. The judgment was served upon the applicant on 13 February 1990.

c. Composition and bankruptcy proceedings

On 7 March 1984 the Wels Regional Court opened composition proceedings (Ausgleichsverfahren) in respect of the applicant's property, and as regards two firms partly owned by the applicant. On 24 April 1984 the composition proceedings were discontinued. The applicant's appeal was dismissed by the Linz Court of Appeal on 25 May 1984.

On 5 June 1984 the Wels Regional Court opened bankruptcy proceedings (Anschlußkonkurs) against the applicant and the firms

concerned. The applicant again unsuccessfully appealed against these decisions. The applicant's subsequent requests to reopen the composition proceedings were to no avail.

In November 1984 the official receiver instituted proceedings for a forced sale by auction of the applicant's shares in two pieces of land. These proceedings terminated on 14 December 1988.

In 1985 the official receiver instituted altogether twenty-one court actions to have transactions entered into by the applicant set aside. Four of these actions were terminated by settlement in 1985; four by settlement and one by a court judgment in 1986; one by court judgment and one by settlement in 1987; three actions terminated in 1988, five further actions terminated by settlement in 1992. Two actions are still pending. One of these actions, brought against the applicant's divorced wife regarding the settlement entered into upon the divorce, was postponed sine die in 1988 in order to await the outcome of other proceedings.

Furthermore, in November 1985 the official receiver instituted proceedings for a forced sale by auction of three pieces of land owned by the applicant. These proceedings terminated in April 1990.

Proceedings instituted by the applicant's divorced wife to have some items separated from the applicant's assets in bankruptcy remained unsuccessful.

In 1986 the official receiver also brought, successfully, a court action against a firm which had paid fees to the applicant personally.

The bankruptcy proceedings are still pending, involving various restrictions under the Austrian Bankruptcy Act (Konkursordnung), in particular the control, by the official receiver, of the applicant's incoming mail under S. 78 para. 2 of the Bankruptcy Act.

On 30 January 1989 the applicant requested the Wels District Court to suspend the control of his incoming mail. He submitted in particular that the bankruptcy proceedings had at that time lasted already five years, and that he received even personal mail only to the extent that he fetched it personally. However, due to his bad state of health, he had repeatedly not been able to do so.

On 13 February 1989 the Wels District Court dismissed the applicant's request of 30 January 1989. The District Court referred to the comments of the official receiver according to which only due to the control of the applicant's incoming correspondence, he had, in 1986, discovered a payment made to the applicant, and found out in January 1989 that the applicant perceived a pension. The Court found that in these circumstances the measure was still necessary for the purposes of the bankruptcy proceedings.

On 14 April 1989 the Linz Court of Appeal, upon the applicant's appeal, quashed the decision of 13 February 1989 and lifted the control of the applicant's correspondence.

On 15 June 1989 the Supreme Court, upon the appeal on points of law of the official receiver, quashed the appeal decision of 14 April 1989 and confirmed the Wels District Court's decision of 13 February 1989.

It appears that in 1988 the applicant instituted official liability proceedings before the Vienna Regional Court in respect of the opening of the above bankruptcy proceedings. These liability proceedings were suspended pending the criminal proceedings against the applicant.

B. Relevant domestic law

a. Detention on remand and alternative measures

Under SS. 180 paras. 1 and 2 of the Austrian Code of Criminal Procedure (Strafprozeßordnung), a person may be held in detention on remand, if he is seriously suspected of having committed a criminal offence and if there is the risk of his absconding, of collusion or of repetition of the offences.

S. 180 para. 4 of the Code of Criminal Procedure requires that detention on remand be not extended were its aims may be attained by one ore more lenient measures. Pursuant to S. 180 para. 5, the main measures envisaged in this respect are the undertaking not to abscond, to hide or to leave the place of residence without the authorisation of the investigating judge, promise not to impede the inquiry, obligation to reside in a specific place or to refrain from frequenting a given locality or from consuming alcoholic beverages, duty to inform the police of changes of address, temporary withdrawal of passport or driving licence, lodging of security, provisional appointment of a probation officer.

S. 190 of the Code of Criminal Procedure provides for the possibility of release on bail when the offence in question is punishable by a term of imprisonment of not more than ten years and where detention on remand has been ordered to counter the danger of the accused's absconding. SS. 191 regulates the payment of bail and the conditions of forfeiture. S. 192 provides for the accused's arrest if he arranged for his absconding.

b. Bankruptcy proceedings

Bankruptcy proceedings are governed by the Austrian Bankruptcy Act (Konkursordnung).

Bankruptcy proceedings are instituted against individuals in case of insolvency (S. 66), against legal entities also in case of heavy indebtedness (S. 67).

Following the opening of bankruptcy proceedings (Konkurser-öffnung), the debtor is deprived of the right to administer his assets (S. 1 para. 1) which are to be seized and administered in accordance with the provisions of the Bankruptcy Act and used to settle the claims of the creditors who have claims of a financial nature against the bankrupt at the time of the opening of the bankruptcy proceedings (S. 1 para. 2). According to S. 3, any legal transactions by bankrupt following the opening of the bankruptcy proceedings, which affect his assets, are not valid as regards the creditors, payment of a debt to the bankrupt personally do not in principle discharge the debtor.

According to S. 63, bankruptcy proceedings are conducted by the Bankruptcy Court (Konkursgericht) as court of first instance, whereby the provisions of in particular the Code of Civil Proceedings applies mutatis mutandis, if the Bankruptcy Act does not provide otherwise.

Upon the opening of bankruptcy proceedings, the Bankruptcy Court appoints an official receiver, pursuant to S. 80. The person to be appointed as official receiver must be of good reputation, reliable and experienced in business, and must have sufficient expert knowledge of business matters. The official receiver should not be a close relative of the bankrupt, and he has a position independent of the bankrupt and his creditors.

The duties and responsibility of the official receiver are regulated in S. 81, in particular the duty to establish the financial situation of the bankrupt and his assets, and to take all necessary steps regarding the bankrupt's claims and debts, including litigation

concerning the assets.

Furthermore, S. 78 provides for various protective measures and notifications of the opening of bankruptcy proceedings which also concern the official receiver. In particular, according to S. 78 paras. 2 and 3, the post office is notified and has to transmit all mail, which would have otherwise sent to the bankrupt, to the official receiver. This does not apply to mail sent by courts or other authorities, if there is an official note that the mail should be served upon the bankrupt despite of the control of correspondence. The official receiver is entitled to open the mail. He is obliged to return all court or otherwise official documents which are not related to the bankrupt's assets, with a note informing about the bankruptcy proceedings. As regards the remainder of mail the official receiver is obliged to grant the bankrupt access, and to pass mail not related to the assets promptly on to him.

The activities of the official receiver are controlled by the Bankruptcy Court which also decides upon complaints lodged by creditors or the bankrupt against measures taken by the official receiver or his performance in general (S. 84).

SS. 27 to 43 provide for the possibility to have transactions entered into by the bankrupt set aside, in particular if they were entered into before opening of the bankruptcy proceedings with the intention to prejudice his creditors (Benachteiligungsabsicht), or in case of obvious underselling (Vermögensverschleuderung), furthermore gratuitous dispositions. The right to request that such transactions be set aside is exercised by the official receiver (S. 37) in instituting a court action with the bankruptcy court or as defence to an action (S. 43).

Have the assets been completely realised and all claims finally been decided, a final distribution takes place (SS. 136 to 138). Subsequently, the Bankruptcy Court terminates the bankruptcy proceedings under S. 138 of the Bankruptcy Act.

S. 59 provides that the applicant's right to administer his assets is restored following the final decision of the Bankruptcy Court to terminate the bankruptcy proceedings.

COMPLAINTS

1. The applicant complains about the length of the criminal proceedings against him. He invokes Article 5 para. 3 and Article 6 of the Convention.

2. The applicant complains under Article 3 of the Convention about his detention on remand, his accident on 15 June 1984 and the subsequent, allegedly insufficient and incorrect medical treatment. He submits that at the time in question he was seriously ill, and that as a consequence of the accident, he suffered lasting injuries.

3. The applicant also complains under Article 5 of the Convention about the restrictions imposed by the Linz Court of Appeal upon his release from detention on remand, in particular the bail and the obligation to report to the investigating judge.

4. Furthermore, the applicant complains about the discontinuation of the composition proceedings in 1984.

5. Furthermore, the applicant complains about the length of the bankruptcy proceedings.

6. He also complains that in the context of the bankruptcy proceedings he has been and still is subjected to restrictions upon his

private life and correspondence in that he has no right to enter into legal transactions and that his incoming mail is controlled by the official receiver.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 August 1990 and registered on 5 November 1990.

On 19 February 1992 the Commission decided to communicate the application to the respondent Government for observations on the admissibility and merits.

On 31 July 1992 the Government submitted their observations. The applicant submitted observations in reply on 10 October 1992, which he amended on 12 January 1993 and 31 August 1993.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the criminal proceedings against him.

Article 6 para. 1 (Art. 6-1), so far as relevant, provides that "in the determination of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time".

The Government submit that the criminal proceedings against the applicant, which started in December 1981, concerned complex fraud offences and necessitated the hearing of numerous witnesses and the taking of extensive expert evidence. Numerous delays were due to the conduct of the applicant, who constantly lodged appeals against decisions taken in the course of the proceedings. Furthermore, he caused a considerable delay regarding the transfer of the proceedings in 1988 and 1989 between the Linz Regional Court and the Vienna Regional Court as he did not pursue his intention to change his place of residence from Linz to Vienna. According to the Government, the judicial authorities conducted the proceedings speedily.

The applicant disputes his responsibility for the delay of the proceedings, in particular as regards the intended change of his place of residence.

The Commission considers that the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the criminal proceedings against him raises questions which require an examination on the merits. This part of the application is, therefore, not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complains under Article 3 (Art. 3) of the Convention that his detention on remand in 1984, an accident suffered during this detention on remand and the subsequent, allegedly insufficient and incorrect medical treatment amounted to inhuman and degrading treatment.

The Commission recalls that detention of a person who is ill and the circumstances of his medical treatment pending detention on remand may raise an issue under Article 3 (Art. 3) (No. 9559/81, Dec. 9.5.83, D.R. 33 p. 158).

In the present case, the Commission, having regard to the applicant's own account of events and the findings of the Austrian courts in the official liability proceedings, considers that there is no indication of inhuman or degrading treatment inflicted upon the

applicant in the course of his detention on remand.

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

3. The applicant further complains under Article 5 (Art. 5) of the Convention about restrictions imposed at the time of his release from detention on remand, in particular the bail and the obligation to report to the police.

The Commission notes that on 30 August 1984 the Linz Court of Appeal, upon the applicant's appeal against his continued detention on remand, ordered his release on the condition that he promised not to abscond pending the criminal proceedings against him, or leave his place of residence without permission of the investigating judge, that he promised not to obstruct the course of the criminal investigations against him, that he reported once a month to the investigating judge, that his passport was provisionally taken away and that he had to give bail of AS 300,000. These restrictions were lifted by the Linz Regional Court on 15 January 1991.

The Commission considers that the conditions fixed upon the applicant's release from detention on remand, in particular the obligation not to leave his place of residence without permission of the investigating judge, to report regularly to the investigating judge, and the provisional seizure of his passport, do not raise an issue under Article 5 (Art. 5) of the Convention but might be regarded as interference with his right to respect for his private life under Article 8 para. 1 (Art. 8-1) of the Convention, and his right to liberty of movement and freedom to chose his residence under Article 2 para. 1 of Protocol No. 4 (P4-2-1) to the Convention.

However, in the present case, these measures were taken in accordance with the Austrian Code of Criminal Procedure. Furthermore, these measures were ordered to allow for the applicant's release from detention on remand and nevertheless secure the criminal prosecution against him on numerous charges of in particular fraud, fraudulent bankruptcy, fraudulent conversion. The Commission considers that the restrictions could be considered necessary in a democratic society for the prevention of crime, and do not appear disproportionate to the legitimate aim pursued. The restrictions imposed upon the applicant were thus justified under Article 8 para. 2 (Art. 8-2) of the Convention and Article 2 para. 3 of Protocol No. 4 (P4-2-3), respectively.

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

4. Furthermore, the applicant complains about the discontinuation of the composition proceedings in 1984.

However, the Commission is not required to decide whether or not the facts submitted by the applicant in this respect disclose any appearance of a violation of the Convention as, in accordance with Article 26 (Art. 26) of the Convention, the Commission finds that the final decision regarding this issue was given by the Linz Court of Appeal on 25 May 1984, which is more than six months before the date on which the application was submitted to the Commission.

It follows that the application must be rejected under Article 27 (Art. 27) of the Convention.

5. The applicant further complains under Article 6 para. 1

(Art. 6-1) of the Convention about the length of the bankruptcy proceedings against him.

Article 6 para. 1 (Art. 6-1), so far as relevant, provides that "in the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time".

The Government submit that the length of the bankruptcy proceedings against the applicant is not unreasonable. The proceedings involved complex factual and legal issues. In particular, the official receiver had to take resort to numerous law suits. Moreover, the applicant's conduct contributed to the length of these proceedings.

The applicant disputes his responsibility for delays in the proceedings, and submits in particular that in the various proceedings instituted by the official receiver, he had no right to participate.

The Commission considers that the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the bankruptcy proceedings against him raises questions which require an examination on the merits. This part of the application is, therefore, not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

6. The applicant finally complains that since the opening of the bankruptcy proceedings he has been subjected to restrictions upon his private life and correspondence in that he has no right to enter into legal transactions and that his incoming mail is controlled by the official receiver.

The Commission finds that this complaint raises an issue under Article 8 (Art. 8) of the Convention, which, so far as relevant, provides:

> "1. Everyone has the right to respect for his private ... life, ... and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of crime, ... or for the protection of the rights and freedoms of others."

The Government maintain that the interference complained of was in accordance with the Austrian Bankruptcy Act. Referring to the reasoning of the Austrian courts, they considered that the continuation of the control of the applicant's incoming correspondence by the official receiver was necessary for the purposes of the bankruptcy proceedings, and, therefore, necessary in a democratic society for the protection of the rights of others, namely the creditors.

The applicant considers that, regarding the duration of the interference complained of, it can no longer be justified.

The Commission considers that the applicant's complaint of the Convention about the restrictions on his right to respect for his private life and his correspondence, as guaranteed by Article 8 para. 1 (Art. 8-1), raises questions which require an examination on the merits. This part of the application is, therefore, not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission unanimously

DECLARES ADMISSIBLE the applicant's complaint about the length

of the criminal proceedings against him, his complaint about the length of the bankruptcy proceedings against him and his complaint about restrictions upon his right to respect for his private life and his correspondence in the context of the bankruptcy proceedings,
without prejudging the merits of the case;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)