AS TO THE ADMISSIBILITY OF

Application No. 27032/95
by L.-G. R.
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 15 January 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, 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 12 October 1994 by L.-G. R. against Sweden and registered on 13 April 1995 under file No. 27032/95;

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

Having regard to the observations submitted by the respondent Government on 22 January and 23 April 1996 and the observations in reply submitted by the applicant on 14 March and 29 May 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swedish citizen born in 1941, resides in Malmö. Before the Commission he is represented by Mr. Magnus Berlin, a lawyer practising in Malmö.

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

A. Particular circumstances of the case

In their tax returns for the assessment years 1979-1982, the applicant and two business partners failed to declare certain amounts deposited on foreign bank accounts. As a consequence, the amounts were not taxed.

A tax audit (taxeringsrevision) concerning the deposited amounts was later commenced. It led to proceedings being taken against the applicant and the two partners concerning the levying of additional tax (eftertaxering) for the above assessment years. In these proceedings, the applicant and his partners, on 1 April and 2 December 1985,

submitted to the County Administrative Court (länsrätten) in Malmö two letters signed by a fourth person who certified, inter alia, that the deposited amounts did not belong to the applicant and the partners but had been used as bribes in their business activities. The court did not believe this statement, and, by judgments of 20 December 1985, it levied additional tax on the applicant and the partners. On 23 June 1988 the judgment was upheld on appeal by the Administrative Court of Appeal (kammarrätten) in Gothenburg.

A preliminary criminal investigation was also initiated. On 25 August 1983 the applicant was heard by the police and informed that he was suspected of aggravated tax fraud (grovt skattebedrägeri) and gross violation of exchange control regulations (grovt valutabrott) due to the deposits on the foreign bank accounts and the failure to declare the amounts to the tax authorities.

On 1 November and 12 December 1985 the police seized, inter alia, the two letters invoked in the tax case before the County Administrative Court. The seizures were made at the court and at the County Administrative Board (länsstyrelsen) in Malmö. By decisions of 16 and 20 December 1985, they were confirmed by the Public Prosecutor. It appears that the seizures were made as part of the preliminary investigation concerning the alleged offences in connection with the deposits on the foreign bank accounts and the failure to declare the amounts to the tax authorities. At the time, the applicant was not aware of the measures.

In 1986 the Public Prosecutor decided not to take any action in regard to the alleged tax offence. The applicant was indicted for the exchange control offence, however, and on 9 June 1988 he was convicted by the District Court (tingsrätten) of Malmö and given a suspended sentence. This judgment gained legal force.

In May 1988 the police made a further preliminary investigation, during which it heard the applicant on 9 May 1988. He was informed that he was suspected of, inter alia, attempted tax fraud (försök till skattebedrägeri) on account of the submission of the above-mentioned letters to the County Administrative Court. On 1 and 2 March 1989 investigation reports were prepared. On 3 April 1989 the reports were served on the applicant and his public defence counsel, who were given an opportunity to submit observations. At that time, suspicions were held against the applicant's partners also.

By an application (stämningsansökan) filed with the District Court on 21 September 1989, the Public Prosecutor requested the court to arraign the applicant, which it did on 25 September. The applicant was charged with the instigation of aggravated fraudulent certification (anstiftan till grovt osant intygande) and attempted aggravated tax fraud. At the subsequent hearing, the Prosecutor amended the charges to include also the applicant's aiding and abetting his partners' attempted aggravated tax fraud. However, no proceedings were brought against the partners.

The District Court held hearings on 9 and 10 January 1990.

By judgment of 24 January 1990, the District Court found the applicant guilty of the charges against him. However, as the instigation offence was considered to be included in the two tax offences, he was only convicted on the latter counts. As concerns the partners' attempted tax fraud, the applicant's conviction for aiding and abetting was based on the Tax Offences Act (Skattebrottslagen, 1971:69) and Chapter 23, Section 4 of the Penal Code (Brottsbalken). The applicant was sentenced to eight months' imprisonment.

On 21 February 1990 the applicant lodged an appeal with the Court of Appeal (hovrätten) of Skåne and Blekinge. He submitted further observations in the case on 27 February. On 5 April the appellate

court requested the applicant to indicate, within two weeks, the evidence he wished to adduce. The applicant was subsequently granted an extension of the time-limit for submission of this statement until 15 May. On 27 November, not having received any statement, the court reminded the applicant thereof. On 28 January 1991 the applicant submitted the statement to the court. However, no evidence was adduced.

On 14 February 1991 the applicant was summoned by the Court of Appeal to a hearing due to take place on 25 March. On 13 March the applicant requested that the hearing be postponed as he had important business matters to attend to and also intended to adduce evidence. The applicant's request was granted and he was ordered to state his evidence within two weeks. On 14 June the applicant submitted a statement of evidence.

On 2 October 1991 the applicant was summoned to the rescheduled Court of Appeal hearing which took place on 11 November 1991.

By judgment of 9 December 1991, the Court of Appeal upheld the District Court's judgment.

On 9 January 1992 the applicant appealed to the Supreme Court (Högsta domstolen) and informed the court that he had appointed new counsel. After having requested extensions of time-limits on three occasions, the new counsel submitted further observations on 13 and 31 March. On 22 October the Supreme Court gave the Prosecutor-General (Riksåklagaren) an opportunity to submit observations in the case, which he did on 24 November. On 25 February 1993 the Supreme Court granted the applicant leave to appeal with respect to the two tax offences. On 30 April the applicant was requested to submit his concluding arguments within three weeks. After an extension of the time-limit, the concluding arguments were submitted on 1 July. The Prosecutor-General replied on 4 October.

The Supreme Court held a hearing in the case on 13 April 1994.

By judgment of 3 May 1994, the Supreme Court upheld the Court of Appeal's judgment. The Supreme Court noted that the conduct with which the applicant was charged was the submission of incorrect information to the County Administrative Court in the proceedings concerning the levying of additional tax. The Supreme Court found that the submission of such information to a court in tax proceedings was punishable under the Tax Offences Act. As the information had not been available to the tax authorities when they originally examined the applicant's tax returns, its submission to the County Administrative Court constituted an offence separate from the false declaration given in the tax returns.

The applicant started to serve his prison sentence on 10 July 1994. On 22 September 1994 the Government rejected his petition for pardon.

B. Relevant domestic law and practice

Complicity in crime

Criminal liability for certain tax offences are prescribed in the Tax Offences Act. Section 4 provides that a person guilty of aggravated tax fraud shall be sentenced to prison for a period of six months to six years. Criminal liability for attempted tax fraud follows from Section 6 which, as regards the applicable penalty, refers to Chapter 23, Section 1 of the Penal Code. The latter provision states that the penalty for an attempt may not exceed the penalty for a completed action and may not be less than imprisonment if the minimum penalty for a completed action is two years or more in prison.

The Tax Offences Act contains no provision on complicity in

crime, nor does it refer, in this respect, to other penal legislation. A general provision on complicity in crime is to be found in Chapter 23, Section 4 of the Penal Code. Before 1 July 1994, its first paragraph read, in relevant parts, as follows:

(Translation)

> "Liability for an act, as provided for by this Code, shall be imposed not only on the person who committed the act but also on anyone who furthered it by advice or assistance. ..."

At this time, it was thus directly applicable only to offences mentioned in the Penal Code. However, the Supreme Court had, in a number of published judgments, applied this provision in relation to offences under the present Tax Offences Act of 1971 and the previous Tax Offences Act of 1943 (cf., e.g., NJA 1958 p. 304, NJA 1972 p. 377, NJA 1976 p. 580 and NJA 1981 p. 277).

The Committee which prepared the present Tax Offences Act stated in its report that Chapter 23, Section 4 of the Penal Code was to be applied by analogy in relation to the draft Tax Offences Act (cf. SOU 1969:42, pp. 190-194). Furthermore, the report by the Parliamentary Standing Committee on Taxation included the following statement (cf. SkU 1971:16, p. 69):

(Translation)

> "The provisions of the Penal Code in respect of complicity in crime are applicable by analogy to tax offences. This means that a person who is not regarded as the perpetrator shall, if he induced another person to commit the criminal act, be convicted for instigation of the offence or otherwise for being an accessory to the offence."

On 1 July 1994 a prohibition on the analogous application of criminal provisions was introduced by an amendment to Chapter 1, Section 1 of the Penal Code. According to the travaux préparatoires, the purpose of the amendment was to reduce the scope of applying criminal law provisions beyond what followed from a strict reading of the provisions in question. Although the amendment was thought to be of more symbolic than practical importance, the compliance of Swedish law with Article 7 of the Convention was an important consideration.

As the intention was not to limit the number of acts which were to be considered as criminal offences, Chapter 23, Section 4 of the Penal Code was made expressly applicable also to criminal offences regulated by other legislation whenever the range of possible penalties for these offences encompassed imprisonment. This was done by the addition of the following sentence to the first paragraph:

(Translation)

> "The same also applies in relation to acts subject to the penalty of imprisonment under another statute or statutory instrument."

Subsequent to the amendments of 1 July 1994, the Supreme Court dealt with the present matter in a judgment concerning complicity in a drunken driving offence, another field of criminal law regulated by special legislation, the Road Traffic Offences Act (Lagen om straff för vissa trafikbrott, 1951:649). The Supreme Court made the following statement:

(Translation)

> "To sum up, the change in legislation can be said to

entail, as far as liability for complicity in crime is concerned, that the non-regulated application until 1 July 1994 of Chapter 23, Section 4 in relation to penal legislation outside the Penal Code has been replaced by codification, according to which the provision, having been amended to a certain extent, is applicable throughout the entire penal law. The criminal liability, which was previously exacted in respect of complicity in drunken driving offences, by means of analogous application of Chapter 23, Section 4, is therefore still unaltered in force, now with the confirmation of an explicit provision."

Probationary release

By an amendment to Chapter 26, Section 6 of the Penal Code, which entered into force on 1 July 1993, the rules on probationary release were changed. Previously, a convict would normally be released on probation after having served half his sentence. After the amendment, a person sentenced to a year or less in prison must serve at least two thirds of the sentence. The amended provision is applied to persons convicted after 1 July 1993 even if they committed the offences before that date.

COMPLAINTS

1. The applicant alleges that the criminal case ending with the Supreme Court's judgment of 3 May 1994 was not heard within a reasonable time within the meaning of Article 6 of the Convention.

2. The applicant also maintains that, under the Tax Offences Act, the accused is under an obligation to give true and complete information concerning his taxation. Thus, he will be convicted for a tax offence if he remains silent, which means that he is forced to confess to possible offences. In this respect, he invokes Article 6 of the Convention.

3. The applicant further complains that his conviction for aiding and abetting his partners' attempted tax fraud violated Article 7 of the Convention, as it had no basis in the Tax Offences Act. Instead, the conviction was based on an analogous application of a general provision of the Penal Code.

4. Also under Article 7 of the Convention, the applicant contends that a heavier penalty than the one applicable at the time the offences were committed was imposed on him, as the rules on probationary release were changed before the Supreme Court's judgment and, as a consequence, he had to serve two thirds instead of half of his eight months' sentence.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 October 1994 and registered on 13 April 1995.

On 19 October 1995 the Commission (Second Chamber) decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure. The Government were asked to deal with the questions whether the criminal charges against the applicant were determined within a reasonable time and whether his conviction for aiding and abetting his partners' tax fraud had a basis in law.

The Government's written observations were submitted on 22 January 1996 after an extension of the time-limit fixed for that purpose. The applicant replied on 14 March 1996. The parties thereafter submitted further observations, the Government on 23 April 1996 and the applicant on 29 May 1996.

THE LAW

1. The applicant alleges that the criminal case ending with the Supreme Court's judgment of 3 May 1994 was not heard within a reasonable time. He invokes Article 6 (Art. 6) of the Convention which, in so far as relevant, reads as follows:

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

As regards the period to be considered the applicant maintains that it commenced on 25 August 1983 when he was heard by the police and informed that he was suspected of, inter alia, aggravated tax fraud. The Government submit, however, that the period commenced on 9 May 1988 when the applicant was informed of the suspicion of, inter alia, attempted tax fraud.

The Commission recalls that according to the case-law of the Convention organs the period to be taken into consideration under Article 6 para. 1 (Art. 6-1) of the Convention must be determined autonomously. It begins at the time when formal charges are brought against a person or when that person has otherwise been substantially affected by actions taken by the prosecuting authorities as a result of a suspicion against him (cf., e.g., Eur. Court HR, Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 33, para. 73).

In the present case, the Commission recalls that the criminal proceedings which ended with the Supreme Court's judgment of 3 May 1994 concerned the submission of false information to the County Administrative Court. The letters containing the false information were submitted on 1 April and 2 December 1985, and events taking place prior to 1 April 1985, therefore, cannot be taken into account. The Commission further notes that the seizures made by the police in November and December 1985 apparently formed part of the preliminary investigation concerning the charges of which the applicant had been informed in 1983, inter alia the failure to declare certain amounts to the tax authorities. The seizures were not brought to the applicant's attention and he was not, at this time, charged with any offence relating to the submission of the letters in question to the County Administrative Court. Neither was the applicant's situation substantially affected by the seizures.

The applicant became directly involved in the preliminary investigation on 9 May 1988 when he was heard by the police and informed of the suspicions relating to the above-mentioned letters. The Commission considers that, as from that date, the applicant was substantially affected by the criminal proceedings. Consequently, from 9 May 1988 the applicant was "charged" for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention and the "reasonable time" referred to in this provision began to run on that date.

The Commission finds that the proceedings were terminated on 3 May 1994 when the Supreme Court pronounced judgment in the case. Thus, the total length of the proceedings to be assessed under Article 6 para. 1 (Art. 6-1) of the Convention was approximately six years.

From a general point of view the reasonableness of the length of the proceedings must be assessed with reference to the complexity of the case, the conduct of the applicant and that of the authorities before which the case was brought (cf., e.g., Eur. Court HR, Boddaert v. Belgium judgment of 12 October 1992, Series A no. 235-D, p. 82, para. 36).

The Government maintain that the proceedings concerned

complicated matters, with regard to both facts and law. Firstly, the criminal investigation initially concerned not only the applicant but also his business partners and the person who signed the letters in question. Secondly, the case concerned a company engaged in business matters abroad. Further, the legal issues involved were of a complex nature. This was shown, inter alia, by the Supreme Court's decision to grant leave to appeal.

As regards the applicant's conduct, the Government contend that he delayed the proceedings considerably. He requested extensions of time-limits for the submission of arguments and statements of evidence in the Court of Appeal and the Supreme Court. On some occasions, he failed to make his submissions in time. Further, the hearing before the Court of Appeal was postponed at the applicant's request. In the Government's opinion, the total delay caused by the applicant amounted to almost one year and eight months.

The applicant claims that, although the case involved some difficult legal issues, the proceedings were not of a complex nature. Only the applicant was prosecuted and no investigations were carried out abroad.

With respect to his conduct, the applicant maintains that the case was not delayed in the Court of Appeal on account of his requests for extensions of time-limits, as the appellate court examines cases in the order they are lodged whether or not time-limits have been extended. Further, the applicant filed his statement of evidence in that court on 14 June 1991 but the court's hearing did not take place until 11 November 1991. This delay was not attributable to the applicant, who can be held responsible for a delay in the Court of Appeal of only three to four months. As regards the Supreme Court, the extensions of time-limits did not prolong the proceedings. The applicant's counsel was informed by the judge in charge of the case that granting additional time for submission of concluding arguments would not delay the proceedings. Further, the Supreme Court requested the observations of the Prosecutor-General seven months after the applicant had submitted his final observations on the question of leave to appeal.

The Commission considers that the criminal proceedings concerned issues of some complexity.

As regards the conduct of the applicant, the Commission finds that he was essentially responsible for the delays in the Court of Appeal. In this respect, the Commission recalls that the applicant was asked to indicate the evidence he wished to adduce within two weeks from 5 April 1990, a time-limit later extended until 15 May 1990 at the applicant's request. However, the applicant did not submit his statement until 28 January 1991. The Court of Appeal hearing was supposed to take place two months later. It was postponed, however,

again at the applicant's request. Thereafter, the applicant failed to observe the time-limit set for the submission of a statement of evidence. The appellate court subsequently took five months to arrange a new hearing. This period cannot be considered unacceptable.

With respect to the proceedings in the Supreme Court, the Commission recalls that the applicant requested several extensions of time-limits for submission of further observations and concluding arguments. It is true that the Supreme Court requested the Prosecutor-General's observations in the case almost seven months after the applicant had submitted his final observations on the question of leave to appeal. Having regard to the fact that the Prosecutor-General submitted observations on two occasions, that the Supreme Court held a hearing in the case and that it decided separately and consecutively on both the question of leave to appeal and the merits of the case, the Commission considers, however, that the total duration of the

proceedings in the Supreme Court was not unreasonable.

Therefore, making an overall assessment of the length of the proceedings, they did not, in the Commission's view, go beyond what may be considered reasonable in the particular circumstances of the case. Thus, the present complaint does not disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

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.

2. The applicant also maintains that, under the Tax Offences Act, the accused is under an obligation to give true and complete information concerning his taxation. Thus, he will be convicted for a tax offence if he remains silent, which means that he is forced to confess to possible offences. In this respect, he invokes Article 6 (Art. 6) of the Convention.

The Commission recalls that the applicant was convicted of attempted aggravated tax fraud on account of having submitted false information, i.e. the letters certifying that the amounts on the foreign bank accounts had been used as bribes, to the County Administrative Court in the proceedings concerning the levying of additional tax. It is true that the letters and the information contained therein were aimed to support the information previously given to the tax authorities by the applicant and his partners in their tax returns and, thus, were submitted in an attempt to conceal earlier tax offences. However, the submission of new false information in the tax proceedings constituted a new specific offence. It is clear that, in the proceedings concerning the levying of additional tax, the applicant could have remained silent or simply maintained the information given in the tax returns. He was not forced to confess to any offences, neither in the tax proceedings nor in the criminal proceedings. It was for the prosecutor to prove, according to the normal rules of evidence, that the applicant had committed the offences with which he was charged.

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.

3. The applicant further complains that his conviction for aiding and abetting his partners' attempted tax fraud violated Article 7 (Art. 7) of the Convention, as it had no basis in the Tax Offences Act. Instead, the conviction was based on an analogous application of a general provision of the Penal Code. In relevant parts, Article 7 (Art. 7) of the Convention provides the following:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. ..."

The Government contend firstly that the present complaint is incompatible ratione materiae with the Convention, as the applicant's conviction by analogous application of the Chapter 23, Section 4 of the Penal Code had a basis in law and as the 1994 amendment to that provision, even assuming that it entailed a change in the legal situation, was of no relevance in the applicant's case as it had no retroactive effect. The Government maintain furthermore that the applicant failed to exhaust domestic remedies as he did not claim before the Court of Appeal or the Supreme Court that the judgment of the District Court in part lacked a basis in law. The fact that the applicant did not raise this argument is, in the Government's view, an indication that he shared the generally accepted view that an analogous

application of the above provision to tax offences was lawful.

With regard to the merits of the present complaint, the Government maintain that it is manifestly ill-founded. The Government argue that, at the time of the applicant's conviction, there had been for decades a consistent case-law to the effect that the provisions on aiding and abetting in the present Penal Code and its predecessor were to be applied by analogy to tax offences. The 1994 amendment to Chapter 23, Section 4 of the Penal Code thus only entailed a codification or confirmation of long-standing consistent case-law. This case-law, established by the Supreme Court, had been followed by the lower courts. Furthermore, as it had been published and thereby made accessible, the applicant was able to foresee that the aiding and abetting of his partners' tax offence would involve criminal liability also on his part.

The applicant submits that his conviction for aiding and abetting his partners' tax offence was clearly based on an analogous application of Chapter 23, Section 4 of the Penal Code. However, a challenge of the legal basis of his conviction would have had no prospects of success, as Swedish law prior to 1 July 1994 did not prohibit analogous application of provisions concerning criminal offences and as there were a number of precedents to the effect that the provisions in the Penal Code on complicity in crime should be applied by analogy in a case like the applicant's. Thus, as such a challenge was destined to fail, there was no effective remedy which the applicant had to exhaust.

The applicant maintains, however, that analogies to the detriment of the accused are prohibited by Article 7 (Art. 7) of the Convention. It is true that the applicant, with the assistance of his counsel, was able to foresee that Swedish courts would apply the relevant provision in the Penal Code to tax offences. However, the fact that the Convention had been violated on numerous occasions in the past is no excuse.

The Commission first notes that the applicant claims a violation of Article 7 (Art. 7) in that his conviction did not have a basis in the applicable statute, the Tax Offences Act. His complaint thus concerns the question whether the act he committed constituted a criminal offence under national law. The Commission considers that it does not have to determine whether the applicant failed to exhaust domestic remedies by not raising this issue in his appeals as, in any event, the complaint is inadmissible for the following reasons.

The Commission recalls that Article 7 (Art. 7) of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (nullum crimen, nulla poena sine lege) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. From these principles it follows that an offence must be clearly defined in law. This requirement is satisfied where the individual can find out from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions are likely to make him criminally liable. When referring to "law", Article 7 (Art. 7) alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises written as well as unwritten law and implies qualitative requirements, notably those of accessibility and foreseeability (cf., e.g., S.W. v. the United Kingdom judgment of 22 November 1995, Series A no. 335-B, para. 35).

The Commission notes that the applicant's conviction for aiding and abetting his business partners' attempted tax fraud was based not only on the relevant provisions of the Tax Offences Act but also on Chapter 23, Section 4 of the Penal Code. The wording of the latter provision, as it was at the time when the relevant acts were committed

and when the applicant was convicted, prescribed liability for complicity in crime only in relation to offences under the Penal Code. The wording did not indicate that the provision was applicable to penal legislation outside the Penal Code, e.g. the Tax Offences Act.

However, as noted above, the concept of "law" under Article 7 (Art. 7) of the Convention comprises not only written but also unwritten law, most importantly the case-law of the national courts. Consequently, if the applicant, on account of the existing case-law, was able to foresee, with a reasonable degree of certainty, that the aiding and abetting in question would make him criminally liable, his conviction was not incompatible with Article 7 (Art. 7).

In this respect, the Commission notes that the Supreme Court, on numerous occasions, had held persons guilty of complicity in tax offences. These convictions were based on Chapter 23, Section 4 of the Penal Code in conjunction with the relevant provisions of the present Tax Offences Act of 1971 or the previous one of 1943. Thus, in 1985, when the applicant committed the relevant acts, there existed a body of settled national case-law to the effect that complicity in tax offences constituted a criminal offence. This case-law had been published and was therefore accessible. Accordingly, as admitted by the applicant himself, it was foreseeable that his conduct would make him criminally liable.

In conclusion, the Commission finds that the applicant's conviction for aiding and abetting his partners' attempted tax fraud had a basis in national law.

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. Also under Article 7 (Art. 7) of the Convention, the applicant contends that a heavier penalty than the one applicable at the time the offences were committed was imposed on him. He refers to the fact that if he had not appealed against the judgment of the Court of Appeal he would have had to serve only half of his eight months' sentence. As he appealed and the Supreme Court's judgment was delivered after the provision on probationary release had been amended, he, instead, had to serve two thirds of the sentence.

The Commission notes that the applicant was sentenced to eight months in prison for the offences he had committed in 1985. Had he been finally convicted before 1 July 1993, he would have had to serve half of the sentence, i.e. four months, in accordance with Chapter 26, Section 6 of the Penal Code as it stood at that time. As he was not finally convicted until 3 May 1994 - after the amendment of Chapter 26, Section 6 - he instead had to serve two thirds of the sentence, i.e. approximately five months and ten days.

It has not been argued that the eight months' sentence as such was heavier than the penalty applicable to the offences in question according to the law in force at the time the offences were committed. Instead, the present complaint concerns the fact that, as a consequence of a change in the law, the applicant was released on probation at a later stage than he would have been had the relevant legal provision not been changed. The Commission considers, however, that this matter concerns the execution of the sentence as opposed to the "penalty" which remains that of eight months' imprisonment (cf. No. 11653/85, Hogben v. the United Kingdom, Dec. 3.3.86, D.R. 46 p. 231). Noting that the applicant did not have to serve more than eight months in prison, the Commission does not find that the execution of the sentence in the present case constitutes a violation of Article 7 (Art. 7) of the Convention.

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.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber