SECOND CHAMBER

AS TO THE ADMISSIBILITY OF

Application No. 12973/87
by Franz MATHES
against Austria

The European Commission of Human Rights (Second Chamber) sitting in private on 5 December 1990, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
F. ERMACORA
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
Mrs. G. H. THUNE
Mr. F. MARTINEZ RUIZ
Mrs. J. LIDDY
MM. J.-C. GEUS
M.P. PELLONPÄÄ

Mr. K. ROGGE, Secretary to the Second 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 6 April 1987 by Franz MATHES against Austria and registered on 6 June 1987 under file No. 12973/87;

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 submitted by the parties may be summarised as follows:

The applicant is an Austrian citizen born in 1920 who resides in Vienna. He was a practising lawyer before 1985 when he had to retire for health reasons. He is represented before the Commission by Mr. C. Prem, lawyer, of Vienna.

In 1977-78 the applicant represented an investment company which inter alia arranged loans for its clients. The applicant acted as a trustee for this firm in that he accepted that the invested funds were paid to a bank account opened in his name; he then carried out the transfers solicited by the firm.

The firm was declared bankrupt in 1978 and subsequently criminal proceedings for fraud were instituted against its manager on the ground that certain of the funds in question had not been used to finance loans, but instead for paying back old debts. Upon a criminal information laid by one of the clients the criminal investigation was extended to the applicant who was suspected of having known of these improper transactions and having aided and abetted the crime of fraud committed by the manager of the above firm. In this connection he was interrogated as an accused (Beschuldigter) by an investigating judge of the Regional Criminal Court (Landesgericht für Strafsachen) of

Vienna on 16 October 1979, who on the same day instituted preliminary investigations against the applicant. On this occasion the applicant denied having known anything of the improper transactions of his client.

The applicant then did not hear anything of the case for several years. He assumed that on the basis of his statements made at the above interrogation by the investigating judge the charges against him had been dropped. In fact, however, an expert had been appointed in November 1979 to report on the various financial transactions involved in this and related cases. The court and prosecutor made requests for the opinion to be expedited several times over the years, the time limit being extended from September 1982 to November 1982 and then to October 1983, April 1984, May 1984, November 1984, January 1985, April 1985 and August 1985. The opinion was finally submitted in January 1986, and on 3 March 1986 the judge concluded the preliminary examination. In July 1986 the applicant was again questioned, when he confirmed his earlier statements.

On 26 January 1987 an indictment was preferred by the Vienna public prosecutor against both the manager of the above firm (concerning numerous charges of fraud) and the applicant (concerning charges of aiding and abetting fraud). It was served on the applicant in February 1987.

The applicant raised an objection (Einspruch) to the indictment in which he claimed that the charges against him were unjustified because he had neither acted with intent to defraud, nor with the purpose of drawing profit, and that he had not committed any acts of deception; accordingly he claimed that the legal conditions of the offence of fraud were not met in his case. However, the Vienna Court of Appeal (Oberlandesgericht) rejected the objection on 25 February 1987, finding that the legal conditions of the offence had been sufficiently spelt out in the indictment to justify a suspicion against the applicant. It was for the trial court to judge whether this suspicion was well-founded. The court accordingly admitted the indictment also against the applicant.

The manager of the above firm was convicted on 18 August 1988. The trial of the applicant's case, which was originally planned to be held at the same time, was severed at the applicant's request due to reasons of health.

On 16 June 1989 the prosecutor requested that the proceedings against the applicant be suspended as, pursuant to an expert opinion on his health, the applicant was too ill to be questioned and his health was unlikely to improve. The proceedings were so suspended, pursuant to Article 412 of the Code of Criminal Procedure (Strafprozessordnung), on 29 June 1989.

COMPLAINTS

The applicant complains that Article 6 para. 1 of the Convention has been violated in that an unreasonable criminal charge was raised against him and in that this charge was not determined within a reasonable time.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 April 1987 and registered on 6 June 1987.

On 6 July 1989 the Commission decided to communicate the complaint concerning the length of the proceedings to the respondent Government, pursuant to Rule 42 para. 2 (b) of its Rules of Procedure, and to invite them to submit written observations on the admissibility and merits of the application.

The observations of the Government were submitted on 16 November 1989 and the applicant's reply on 27 April 1990.

On 7 November 1990 the Commission decided that the case should be referred to the Second Chamber.

THE LAW

1. The applicant complains that an unreasonable criminal charge was raised against him, and that the charge was not determined within a reasonable time, as required by Article 6 para. 1 (Art. 6-1) of the Convention.

The first sentence of Article 6 para. 1 (Art. 6-1) provides as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

2. As to the complaint that an unreasonable criminal charge was brought against the applicant, the Commission recalls that it is for the domestic courts to assess evidence, although the way in which evidence is taken may raise issues under Article 6 para. 1 (Art. 6-1) of the Convention (cf. Eur. Court H.R., Barberà Messegué and Jabardo judgment of 6 December 1988, Series A no. 146, p. 31 para. 68). The Commission notes that the Court of Appeal admitted the indictment against the applicant, observing that it was for the trial court to judge whether the suspicion against the applicant was well-founded, and that the proceedings were ultimately discontinued in view of the applicant's state of health. In these circumstances the Commission finds no indication of unfairness in the proceedings complained of.

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 also complains of the length of the proceedings, again alleging a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission notes that the proceedings against the applicant began on 16 October 1979, when preliminary investigations were instituted against the applicant. This is not contested by the respondent Government. On 16 June 1989 the prosecutor requested that the proceedings be suspended and a decision was taken pursuant to Article 412 of the Code of Criminal Procedure (Strafprozessordnung) on 29 June 1989.

The Government accept that over 7 years elapsed between the time when the preliminary investigations were instituted against the applicant and the date of the indictment against him. They submit, however, that the case was extremely complicated, involving huge sums of money, foreign investments and a case-file of some 10,000 pages by 1986. They also underline that the court and the public prosecutor frequently attempted to speed up production of the expert's opinion.

The Commission considers that the complaint concerning the length of the proceedings raises difficult questions of fact and law which are of such complexity that their determination should depend on an examination of 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 and no other grounds for declaring

it inadmissible have been established.

For these reasons, the Commission unanimously

DECLARES INADMISSIBLE the complaint that the criminal charge was unreasonable, and

DECLARES ADMISSIBLE, without prejudging the merits of the case, the complaint as to the length of the proceedings.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)