AS TO THE ADMISSIBILITY OF

Application No. 18905/91
by R. B.
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 30 November 1994, the following members being present:

MM. H. DANELIUS, Acting President
S. TRECHSEL
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, 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 1 February 1991 by R. B. against Switzerland and registered on 4 October 1991 under file No. 18905/91;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 17 June 1993 and the observations in reply submitted by the applicant on 28 August 1993;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant, a Swiss citizen born in 1944, is an architect residing at Gunzwil in Switzerland. Before the Commission he is represented by Mr. E. Grueter, a lawyer practising in Lucerne.

I.

In 1977/78 various companies, which the three S. brothers had founded in the Canton of Uri, merged with two building firms, A.B. AG and C.B. AG, in the Canton of Lucerne whose board members were the applicant and a certain A.A.

In February 1981 the Investigating Office (Verhöramt) of the Canton of Uri instituted criminal investigations against certain persons of the companies in the Canton of Uri. The investigations were extended to all S. companies and the persons involved, eventually also

to the companies in the Canton of Lucerne.

Investigations concerning the applicant commenced on 17 February 1982. On 1 March 1982 he was arrested and remanded in custody. He was questioned as to various offences, and released after one day.

The Investigating Office prepared its final Report on 25 April 1985.

On 21 March 1986 the Uri Public Prosecutor's Office (Staatsanwaltschaft) indicted altogether 14 persons, among them the applicant. The latter was charged with various economic offences allegedly committed in the years 1976 and 1977.

On 12 March 1987 the Uri Regional Court (Landgericht) convicted the applicant of repeatedly and continuously forging documents (wiederholte Urkundenfälschung) and of continuously obtaining a false registration (Erschleichung einer falschen Beurkundung). In one instance, the applicant was acquitted of the offence of fraud and of obtaining a false registration. In respect of the offence of giving false information about commercial companies the proceedings were terminated on account of prescription. The applicant was sentenced to eighteen months' imprisonment, suspended on probation for three years.

The judgment of the Uri Regional Court was served on the applicant on 24 July 1987.

II.

Both the applicant, on 18 August 1987, and the Public Prosecutor's Office, on 3 September 1987, appealed against this judgment.

In its judgment of 31 May, 15 June and 29 June 1988 the Court of Appeal (Obergericht) of the Canton of Uri dismissed the applicant's appeal and partly upheld the appeal of the Public Prosecutor's Office. The Court found that the applicant was guilty of fraud, of repeatedly and continuously forging documents, and of continuously obtaining a false registration, and sentenced him to two years' imprisonment.

The decision of the Court of Appeal was served on 21 November 1988.

III.

On 7 December 1988 the applicant filed with the Federal Court (Bundesgericht) a public law appeal (staatsrechtliche Beschwerde), complaining inter alia under Article 6 para. 1 of the Convention of the length of the proceedings, and a plea of nullity (Nichtigkeitsbeschwerde).

On 29 March 1990 the Federal Court dismissed the applicant's public law appeal. With regard to the length of the proceedings the Court found:

<Translation>

> "Even if it is assumed, in favour of the applicant, that the period to be considered commenced with the first investigation acts against the applicant, the period only commenced as from May 1981, as the Uri Investigating Office then began with the first investigations in the <C.>-case ... The second instance judgment was pronounced at the end of June 1988. In view of the involvement of over 20 companies in the <C.>-case and the concomitant volume of files, and of the altogether fourteen indicted persons (the first instance judgment numbers 136 pages),

the length of proceedings lasting slightly more than seven years cannot be regarded as disproportionate ... The applicant's complaint is therefore unfounded."

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"Selbst wenn zugunsten des Beschwerdeführers die ersten Untersuchungshandlungen gegen ihn als fristauslösend angenommen werden, läuft die Frist erst vom Mai 1981 an, weil das Verhöramt Uri damals mit den ersten Ermittlungen in der <C.>-Affäre begann ... Das zweitinstanzliche Urteil erging Ende Juni 1988. Angesichts der Verwicklung von über zwanzig Gesellschaften in die <C.>-Affäre mit entsprechender Aktenfülle und der insgesamt vierzehn Angeklagten (das erstinstanzliche Urteil umfasst 136 Seiten) kann eine etwas mehr als 7jährige Verfahrensdauer nicht als unangemessen bezeichnet werden ... Die Rüge des Beschwerdeführers erweist sich damit als unbegründet."

On 29 March 1990 the Federal Court partly upheld the applicant's plea of nullity insofar as it concerned the applicant's sentence.

The Court recalled in respect of the applicant's public law appeal that there had been no violation of Article 6 para. 1 of the Convention on account of the length of the proceedings; it found that it was thus unnecessary to examine whether the applicant's sentence should be reduced on such grounds. On the other hand, the Federal Court considered that the Court of Appeal, when determining the sentence, had not observed that the offences had occurred relatively long ago, and that the applicant's conduct had since been good. For this reason it referred the case back to the Court of Appeal. The remainder of the plea of nullity was dismissed.

Both judgments of the Federal Court were served on 19 May 1990.

IV.

Proceedings were resumed before the Court of Appeal of the Canton of Uri which on 5 July 1990 sentenced the applicant to 21 months' imprisonment. The judgment was served on 31 August 1990.

In its decision the Court of Appeal noted that the Federal Court, in its decision of 29 March 1990, had found no breach of Article 6 para. 1 of the Convention in respect of the length of the proceedings. The Court considered that in its first decision it had already taken into account the length of the proceedings. However, following the applicant's successful plea of nullity to the Federal Court, the Court of Appeal found that it had insufficiently considered this ground of reduction; moreover, two more years had elapsed since its first judgment.

V.

Against this decision the applicant filed with the Federal Court a plea of nullity on 20 September 1990, and a public law appeal on 27 September 1990. He complained inter alia under Article 6 para. 1 of the Convention of the length of the proceedings, submitting that the previous court should have considered this when determining his sentence.

In two decisions of 29 November 1990 the Federal Court dismissed the applicant's plea of nullity and his appeal. The judgments were served on 16 August 1991.

In respect of his complaint under Article 6 para. 1 of the Convention the Court referred in its decision on the public law appeal to its decision of 29 March 1990 and then continued:

<Translation>

> "It suffices to refer here to those considerations. They are not altered by the fact that again two further years have elapsed while the case was referred back to the previous court. For the rest, the applicant only raised this complaint to point out that the Court of Appeal should have included in its reasons for the judgment this further lapse of time as an additional ground to reduce the sentence ... This is exactly what the Court of Appeal did ... In this respect therefore the complaint no longer stands."

<German>

> "Es genügt hier, auf jene Erwägungen zu verweisen. Dass im Rahmen des Rückweisungsverfahrens nun nochmals rund 2 Jahre dazukamen, ändert daran nichts. Im übrigen erhob der Beschwerdeführer diesen Einwand nur um darzutun, dass das Obergericht diese zusätzlich verflossene Zeit als weiteren Strafminderungsgrund in seine Urteilserwägungen hätte miteinbeziehen müssen ... Gerade dies hat das Obergericht aber getan ... Der Beschwerde ist deshalb in diesem Punkt der Boden entzogen."

VI.

On 20 February 1992 the applicant filed a plea for pardon (Begnadigungsgesuch) with the Council of State (Regierungsrat) of the Canton of Uri, asking for a remission (Erlass) of his prison sentence on the ground that more than 13 years had elapsed since he had committed the offences for which he now had to serve a prison sentence.

On 8 April 1992 the Parliament (Landrat) of the Canton of Uri partly upheld the applicant's plea and reduced the sentence by five months to sixteen months' imprisonment. It took into account the entire length of the proceedings as well as the fact that a further two years had elapsed since the second judgment of the Court of Appeal, but considered that a complete remission of sentence could not be granted, inter alia as the offences which the applicant had committed were not negligible (nicht leicht wiegen).

The applicant's public law appeal was declared inadmissible by the Federal Court on 6 July 1992.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention of the length of the criminal proceedings. He observes that the Swiss courts found no violation of Article 6 para. 1 of the Convention, and that there was no reduction of sentence on these grounds.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 1 February 1991 and registered on 4 October 1991.

On 31 March 1993 the Commission (First Chamber) decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and merits in respect of the complaint under Article 6 para. 1 of the Convention relating to the length of the proceedings.

The Government's observations were submitted on 17 June 1993. The applicant's observations in reply were submitted on 28 August 1993.

THE LAW

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

2. The Government submit that the applicant is no longer a victim of a violation of Article 6 para. 1 (Art. 6-1) of the Convention since his sentence was twice reduced in view of the length of the proceedings, i.e. by the Court of Appeal of the Canton of Uri on 29 March 1990, and by the Parliament of the Canton of Uri on 8 April 1992.

The applicant submits that his sentence was reduced only once, namely by the Court of Appeal on 29 March 1990.

The Commission recalls the Convention organs' case-law according to which an applicant's status as a "victim" within the meaning of Article 25 (Art. 25) of the Convention may depend on compensation being awarded to him on the basis of the facts about which he complains before the Commission. However, in cases concerning complaints of length of proceedings or detention the domestic authorities must have expressly recognised the alleged infringement of the Convention and, if necessary, provide substantial redress in relation thereto. Only when these two conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 32, paras. 69 et seq.; No. 10868/84, dec. 21.1.87, Woukam Moudefo v. France, D.R. 51 p. 62; No. 10884/84, dec. 13.12.84, H. v. Federal Republic of Germany, D.R. 41 p. 252).

In the present case the Court of Appeal of the Canton of Uri in its judgment of 31 May, 15 June and 29 June 1988, sentenced the applicant to 24 months' imprisonment. In its further decision of 5 July 1990 it reduced the sentence by three months to 21 months' imprisonment. On 8 April 1992 the Parliament of the Canton of Uri further reduced the sentence by five months to sixteen months' imprisonment.

However, the Federal Court in its decision of 29 March 1990 expressly denied a violation of Article 6 para. 1 (Art. 6-1) of the Convention in respect of the applicant's complaint of the length of the proceedings. The Court of Appeal in its decision of 5 July 1990 reiterated this conclusion which was again confirmed by the Federal Court in its further decision of 29 November 1990. The Parliament of the Canton of Uri, while taking into account the length of the proceedings and the lapse of two further years since the second judgment of the Court of Appeal, also did not state that the length of the proceedings amounted to a breach of Article 6 para. 1 (Art. 6-1) of the Convention, or even that it had been excessive.

It follows that there is no express statement by any domestic authority that there has been a violation of the Convention.

In these circumstances it is unnecessary to examine whether the reduction from originally 24 months' to sixteen months' imprisonment may be considered as a sufficiently substantial reduction (see mutatis mutandis No. 10868/84, Woukam Moudefo v. France, loc. cit.).

The applicant can therefore still claim to be the victim within the meaning of Article 25 (Art. 25) of the Convention of a breach of Article 6 para. 1 (Art. 6-1) of the Convention.

3. The Government furthermore submit that the length of the proceedings did not violate Article 6 para. 1 (Art. 6-1) of the Convention. Thus, the proceedings commenced on 1 March 1982 when the applicant was remanded in custody, and they ended on 16 August 1991 when the decisions of the Federal Court were served on the applicant. The proceedings lasted altogether 9 years and five and a half months.

The Government further recall that the case was extremely complex, involving 14 co-accused, 20 companies, and many millions of Swiss Francs. As regards the period of investigation, the Government point out that the applicant has not complained about any inactivity on the part of the investigating authorities. In view of the complexity of the case the Government have not given a detailed list of the conduct of the investigating authorities, but would do so upon the Commission's request. The final report of the investigating judge counted over 300 pages, the indictment act 166 pages, the first instance judgment 136 pages. Between 1987 and 1990 altogether seven court decisions were taken. Finally, the Government point out that the applicant contributed to the length of the proceedings by employing various remedies.

The applicant submits that from the time when he committed the offences on 11 August 1976 until the serving of the final decision of the Federal Court on 16 August 1991, more than fifteen years elapsed. In his view, it is inhuman and antisocial that he should thereafter still have to serve the prison sentence. The Court of Appeal in its decision of 31 May, 15 June and 29 June 1988 in fact raised the sentence. On the whole, the investigations were too difficult for the authorities.

The Commission finds that the complaint concerning the length of the proceedings must be examined on its merits. The application cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons the Commission by a majority

DECLARES THE APPLICATION ADMISSIBLE,
without prejudging the merits of the case.

Secretary to the Second Chamber	Acting President of the Second Chamber
(K. ROGGE)	(H. DANELIUS)